United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE *108th* CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, WEDNESDAY, FEBRUARY 26, 2003 *No. 31—Part II*

Senate

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

Continued

Mr. REID. Madam President, on the floor today is the former chairman of the Judiciary Committee, now the ranking member of the Judiciary Committee, the distinguished senior Senator from Vermont. The Senator has heard me on a number of occasions boast about the work he has done as the leader of the Democrats in the Judiciary Committee and the leader of the Senate in the Judiciary Committee. There has been a lot of talk about the Democrats holding up judicial nominees during the time we were in power in the Senate.

It is my understanding—I ask the Senator to respond to this question—that while the distinguished Senator from Vermont was chairman of the Judiciary Committee for a very short period of time—17 months—he broke all records of the body in approving some 100 Federal judges for President Bush.

Is that a fair statement?

Mr. LEAHY. Madam President, it is a fair statement. In fact, I think in mid-July we finally got an agreement to organize the committee. Ten minutes after we got that agreement, I noticed the first hearing and set the first hearing on President Bush's judges.

The Republicans had been in charge up to that time—up until July—and there were a number of nominees of President Bush, but they had not held any hearings whatsoever. I began the process of holding them within 10 minutes of the time I became chairman. Then, during the next 17 months, we held hearings on 103, we voted through 100, voted down 2, and had 1 remaining.

There is no 17-month period under Republican control with President Clinton when that was done.

Mr. REID. Will the Senator also respond to this? It is also my recollection that during that 17-month period the Senator from Vermont's office received a letter which contained anthrax, Senator DASCHLE's office received a letter which contained anthrax, and 9/11 occurred. In spite of all that, and the Senate being, in effect, locked down and the country being locked down, still the Judiciary Committee, led by the distinguished Senator from Vermont, approved a record number of judges, in spite of those items I mentioned—two anthrax attacks, one on the Senator who is now before me, one on the distinguished majority leader, the Democratic leader, and 9/11.

Is that true?

Mr. LEAHY. The Senator is absolutely correct. Obviously, we all remember how much disruption there was. The letter to the distinguished Senator from South Dakota ended up closing the Hart Building and temporarily the Dirksen Building. The letter that was sent to me was so toxic that two people who touched it died. Died. We had not canceled a single hearing. In fact, on one day when the Senate was being evacuated because we had scheduled a time to vote out some of President Bush's nominees, I literally grabbed Senators and held them here long enough to vote out some of President Bush's nominees.

I say this knowing that when the Republicans were in charge and President Clinton was in office, we sometimes went 8 or 9 months without even having a vote on nominees. We were doing it several times a month.

I appreciate the Senator asking those questions.

Mr. REID. Will the Senator also answer this question? When the Hart Building was locked down, we were out of space around the Capitol and the Senator had every excuse as chairman of that committee not to hold hearings. I remember the Senator holding hearings down in the basement of the Capitol. There was not room for people. People were jammed into that room. But the Senator used no excuse to avoid going ahead with President Bush's nominations to the judiciary.

Is that true?

Mr. LEAHY. The distinguished Senator is absolutely correct. I might say that I commend especially the staff who in some instances were working out of their cars, working out of my hideaway or in the hallways, just because even our committee rooms were closed. I had people working out of the family room in my house. We did all of this so we could continue what turned out to be a recordbreaking number of hearings and votes on President Bush's nominees.

Mr. REID. Madam President, I want to make a brief statement to the distinguished senior Senator from West Virginia.

I ask unanimous consent that he be recognized following my very brief statement.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. REID. Madam President, I want the RECORD to reflect that the Senator from Vermont has been an exemplary chairman of one of the most important committees during one of the most difficult times in the history of this country. And for anyone to ever—I have been on this floor defending the Senator, as I will continue to do my entire career. If anyone ever suggests the Senator from Vermont didn't do stalwart and exemplary work, I will take them to task for it. In the most difficult of circumstances, in the most partisan times in the history of this country, the Senator from Vermont was not partisan. He moved the committee along in a nonpartisan, bipartisan basis. As I recall, 100 judges were approved and only two judges were turned down by the committee.

I think it is remarkable what has been done. I appreciate the Senator responding to those brief questions.

I want to just say briefly there has been some suggestion we have been

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

trying to hold up things here. The only one holding up things is the majority. They can move off this nomination five seconds from now. They could give us the information we want or try to invoke cloture. The reason we are not off this nomination is they have no plan and nothing to do.

I would like to read into the RECORD what Bob Novak—we all know Bob Novak. He is one of the most conservative—it is his birthday today. I heard it on Public Radio. I wish Bob Novak a happy birthday. Bob Novak hasn't been very prone to saying good things about Democrats. But here is what he said.

Novak: Well, the Republicans figured that they would be home at their recess last week and find out what the people wanted. Apparently, the people weren't interested in Estrada, because the Republicans have no idea what to do in the Senate. They had a leadership meeting yesterday afternoon, couldn't figure anything out, had a luncheon of all the Republican senators, didn't figure it out. All that's decided is, they're not going to ask for a cloture vote to force an end to the filibuster, because they'd lost that. But they have no strategy for around-the-clock sessions. They don't know what to do. The Democrats are winning.

That is Bob Novak.

I want this RECORD spread with the fact that the Democrats if we wanted to hold things up, we could be objecting to committees meeting. We could be doing a lot of things just to slow things down. We want to speed things up. We want to get to the business of this country dealing with the economy.

I listened to the radio this morning that they were going to have a debate in the British Parliament about the Iraqi war. The senior Senator from Illinois told me he listened to an hour of that debate this morning. I think it is wonderful that the British people are able to listen to their leaders debate a war. It does not matter what side you are on. Wouldn't it be important to debate the pros and cons of this war?

And I say to my friend—my esteemed friend, somebody I admire greatly—the senior Senator from West Virginia, you have been able to come here and sneak a little bit of time—sneak it in—to talk about the war. It has been hard for the Senator to get floor time to talk about this issue.

I respect and admire both of these Senators on the floor for being such great examples to me. But I want everyone to know that we are not trying to take advantage of anyone. If we were doing that, there would be all kinds of things we could do in a parliamentary sense. We are not doing that. We believe the burden is on the majority to move the legislation of this country, and it is not being moved.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Madam President, I thank the distinguished Senator from Nevada for his kind comments and always for the great services he performs for the American people here in this body.

Madam President, is the Senate in executive session?

The PRESIDING OFFICER. Yes, it is.

Mr. BYRD. I ask unanimous consent to speak as in legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. I thank the Chair.

THE BUDGETARY COSTS OF A WAR IN IRAQ

Mr. BYRD. Madam President, since last August, the administration has worked aggressively to convince the American public that Saddam Hussein is a brutal dictator who directly threatens the United States. The President has been unambiguous, and often dangerously blunt, about his passion to use military force to destroy Saddam Hussein's regime.

The Bush administration has promoted a vision of Saddam's removal from power quickly, easily, and bloodlessly. Indeed, part of the rationale for support for this war is that America's tremendous military superiority over Iraq will confine a military conflict to a relatively painless contest between the United States' awesome military forces and the relatively weak, conventional military machine of Saddam Hussein.

A swift and simple military victory certainly is one possibility, but in our democratic Republic the administration also has a responsibility to inform the American people that much less pleasant scenarios are also possible and even likely. The Congress has a responsibility to explore all possible scenarios with an eye to the eventual costs of this war. We must not just accept the rosy projections so far offered by the administration. Frankly, I have seen little effort by either the administration or the Congress to inform the American taxpayer about the likely costs of this war.

In both dollars and human lives, the administration has been ominously quiet about its internal calculations and estimates. What is even worse is that the Congress has barely bothered to ask about them.

Earlier this month, the President unveiled his budget for the fiscal year 2004. Even assuming the most primitive and loose definition of the term ''fiscal responsibility,'' that budget request should certainly have included some rough estimate cost for a war with Iraq. Even a range of costs would have been somewhat illuminating.

But no cost estimate was included in the budget of the President's. Now let me repeat that. There is no estimate of the cost of the looming war with Iraq in the President's budget—no cost estimate. That is hard to believe, isn't it? But that is the case. The possible war has dominated the airwaves for months, and yet there is no cost estimate in the President's budget. President Bush mentions the looming conflict in nearly every public pronouncement, and yet no cost estimate to fight the war appears in the President's budget—none. Is the administration trying to tell the people of this Nation it is for free?

When the Defense Secretary presented the President's defense budget to the Senate Armed Services Committee, and was asked what the administration projected that a war in Iraq would cost, he would only say that such costs are ''not knowable.'' Let us contemplate that answer: ''not knowable.'' Does the Secretary of Defense mean to say that this great Nation does not yet know what its plans include for a war with Iraq? Is that why the costs are ''not knowable''? Does he mean to say that we do not yet know exactly what we are going to try to achieve in Iraq? Is that why the costs are ''not knowable''? Or does he simply mean to indicate that he does not want to divulge the potential costs, therefore to us they are ''not knowable''?

One must presume that by now the administration would have made several internal forecasts of the military cost of the war using various scenarios, and that the White House Council of Economic Advisors would have prepared for the President a classified study of the projected economic impact of the war. Reportedly, OMB Director Mitch Daniels has been working on war estimates for months, and yet we are told that these costs are ''not knowable.'' None of this information has been made available to the public, nor, I suspect, is it likely to be released in the near future. This Congress—these two Houses; the people's elected Representatives—has a responsibility to demand that information. The people have a right to know. They are going to suffer the costs. Congress must not accept the answer, ''not knowable.'' The American people, I say, deserve to know. They deserve to know the truth.

There was one cost estimate provided by the administration which came from an interview last fall with Larry Lindsey, the President's former economic advisor, who said that a war with Iraq could cost between $100 billion and $200 billion. He went on to opine that that was ''nothing.''

Yet the White House quickly distanced itself from that comment, and the Director of the Office of Management and Budget rebuked that estimate, saying that Lindsey's estimate was ''very, very high.''

The OMB Director suggested that the cost of the war would be closer to $60 billion or $70 billion. The Pentagon recently stretched that estimate to $95 billion. I wonder just what we are to make of these conflicting estimates.

How are we to gauge the validity of such widely varying numbers? How are the American people to gauge the validity of such widely varying numbers? Do these figures contemplate other complications? What if casualty estimates grow into the thousands? And they may. What if oil prices skyrocket, sparking inflation and lines at the gas pump and costing the U.S. economy thousands of American jobs? Suppose the Middle East erupts in a tornado of violence, toppling regime after regime in the region.

Even a rudimentary list of the possible contingencies shows that costs may grossly exceed what the administration wants the public to believe.

The Congressional Budget Office reported last September that the incremental cost of just deploying a force to the Persian Gulf—that is, those costs incurred above those budgeted for routine operations—could be between $9 billion and $13 billion. Prosecuting a war, according to the CBO, could cost between $6 billion and $9 billion per month. And after hostilities ended, the cost just to return U.S. forces to their home bases could range between $5 billion and $7 billion.

Regardless of the swiftness of a military victory—it could be swift, but it might not be—there remains the cost of a postwar occupation of Iraq, which the administration says could last for up to 2 years and could mean another $1 billion to $4 billion, or more, per month during that period. On top of that, the United States might face a humanitarian crisis, including rampant disease and starvation, if Saddam Hussein employs a scorched earth strategy in defending his regime. What about the need for a cleanup of biological and chemical weapons if the Iraqi Republican Guard employs them against U.S. soldiers?

Reconstruction and nation-building costs resulting from installing a democratic government in Iraq have to also be thought about. The American Academy of Arts and Sciences projected that the minimum reconstruction and nation-building cost for Iraq could be as high as $30 billion, and that is under the very best of circumstances. Will the administration propose something similar to the Marshall plan for Iraq? The Academy reported that U.S. investments in Western Europe after World War II under the Marshall plan cost a total of $13.3 billion over a 4-year period. That is the equivalent of $450 billion over 4 years if measured as a percentage of GDP in 2002.

Mr. SARBANES. Madam President, will the Senator yield for a question?

Mr. BYRD. Madam President, I am glad to yield.

Mr. SARBANES. Madam President, let me say how much I appreciate the clarion call which the very distinguished Senator from West Virginia has been sounding. It is an extremely important issue—actually the No. 1 challenge facing the country.

Am I correct that the budget submitted by the administration—and I know the very able Senator probably knows more about the appropriations process than any Member of this body—did not contain any money for a potential war in Iraq or for subsequent reconstruction efforts?

Mr. BYRD. The distinguished Senator from Maryland is preeminently correct. There is no estimate of what the war will cost in the President's budget.

Mr. SARBANES. So the deficits projected in the President's budget, which are now going up toward the $300 billion level—and which have broken us out of the situation we were in only a couple of years ago where we were running surpluses—do not encompass potential costs of this military action in Iraq. In other words, the deficits would be significantly enhanced by whatever the amount of the cost would be; is that correct?

Mr. BYRD. Astoundingly, the President's budget does not present such a cost. The Senator is exactly right.

Mr. SARBANES. I was listening carefully to the Senator. As I understand it—and the estimates are all over the lot—the administration represents that it could last 4 days, or it could last 4 weeks, or it could last 4 months; and you try to get them to pinpoint it, and they say: Well, who can tell what is going to happen? I gather even the Pentagon—and presumably they want to present the best light—is estimating a $100 billion cost.

Mr. BYRD. It is $95 billion, right under that.

Mr. SARBANES. And you have an estimate for the reconstruction that was $30 billion, roughly speaking.

Mr. BYRD. At a minimum, $30 billion.

Mr. SARBANES. At a minimum. Of course, that was assuming we would not have this kind of devastation out there that might be possible if the weapons of mass destruction were to be utilized.

Mr. BYRD. Yes.

Mr. SARBANES. Well, these are tremendous costs that are staring us in the face, are they not?

Mr. BYRD. They are indeed. It is amazing.

Mr. SARBANES. I think it is a very important service the Senator is rendering in order to lay this out. Many people seem to be skipping right over this dimension, in terms of evaluating the path we should follow in dealing with the challenge we confront in the region.

Mr. BYRD. Scriptures say that the wages of sin is death. We are not being told what the wages of this war are going to amount to. There is no discussion. One may be led to believe that this is going to be like a video game: It will be just over in a matter of moments, in days or weeks. There is no discussion of the cost. There is no estimate.

Now, I find it very hard to believe that the administration has not carefully explored the potential cost of what the American people are going to be asked to bear; and I think the polls we read about, which indicate a pretty high degree of support for the President in his passion to lead us into this war—I don't believe those people who are asked questions have any idea whatsoever as to what the costs are going to be. Why should they? We ourselves don't have any idea. The administration is not presenting us with any estimates of the cost. This seems to me to be strikingly strange.

We are being led into a war—led into a war—by an administration that makes no effort whatsoever to tell the American people what they are likely to pay in treasure, in lives, and especially with regard to a postwar Iraq. I think it is going to be like a bottomless pit.

Mr. SARBANES. I thank the Senator for bringing this to our attention. It is an extremely important point, and the Senator is absolutely right. It has simply been glossed over in any consideration of this matter.

Mr. BYRD. Oh, yes, glossed over. There seems to be no thought given to it. I want to tell the Senator from Maryland that we on the Appropriations Committee and the American taxpayers are going to learn about it at some point when it is over, and the costs of this war may be colossal.

The time to ask questions is now, not a year from now, not when the body bags start coming back, not when the paying of the toll is coming due.

Madam President, I thank the distinguished Senator, one of the most able Senators I have ever seen in my 45 years in this body and in my 50 years on Capitol Hill. He is on committees that know something about dollars and cents and how they add up. I thank him for his incisive questions.

Mr. SARBANES. I thank the Senator.

Mrs. BOXER. Madam President, will my friend yield briefly for a followup to Senator SARBANES' questions?

Mr. BYRD. Madam President, I do yield.

Mrs. BOXER. I thank my friend. I wish to add my voice to that of Senator SARBANES and thank the Senator from West Virginia for his great leadership. I want him to know that in California, my constituents have talked to me about the Senator's statements many times. I spent the week in California, and they have received through e-mail a copy of the most recent statement Senator BYRD made on the Senate floor. It gives them hope to know that he is out here with all his years, his sage years here, and it really helps. It is a great help to me as well as a newer Senator, although one who has been here for 10 years and 10 years on the other side.

I wish to pick up on the questions of, as we look at the costs of this war, to set aside the human costs, about which I have spoken at length and about which the Senator from West Virginia has continually been so eloquent, there is also the cost, for example, of payments to our friend and ally, Turkey, which, as I understand it, also is not in the budget request; am I correct?

Mr. BYRD. The able Senator is correct.

Mrs. BOXER. We are hearing everything from $6 billion in cash to an additional $10 billion to $20 billion in loan guarantees, and yet not a word in the budget. I wish to ask a final question of my friend, and that is, I was amazed to read that our friend, CARL LEVIN, on

the Armed Services Committee, was asking questions of the Pentagon about how many troops would be needed in the aftermath of war, immediately following perhaps for 2 years, perhaps longer, the number of troops that need to be put out there. The answer was 200,000 troops, and it took the breath of many of our colleagues. Again, I ask my friend a question: Is there any mention of that fact in the 2004 budget and the impact of that on our budget?

Mr. BYRD. No, there is no mention of that fact. I must say, I have been informed that figure was inaccurate and that the general who used that figure later retracted the figure.

Mrs. BOXER. Does my friend know what they are talking about in terms of the number of troops? I suppose a lot would depend upon whether we have a lot of our allies with us, would it not?

Mr. BYRD. I am sure it would depend in great measure upon that. I do not think the administration has made any presentation of such a figure at all. I understand the British are going to supply 26,000 personnel, but there is no indication of what the other countries—and there are supposed to be a considerable number of other countries that would be supporting us, but nobody has indicated how many troops those other countries are going to present, and I am not sure they could present a great number. Angola, Cameroon, there are various and sundry other nations, some of which names I am almost unfamiliar with. They are included in this array of allies we are going to have supporting the effort.

(Mr. CORNYN assumed the Chair.)

Mrs. BOXER. In closing, I again thank my friend very much. The fact that a general, a very highly placed general, would come out with a number that is not correct, is in itself astounding. It means he certainly is not informed either. Not only are we uninformed, but he is uninformed, and this should give even more pause about this whole situation. I thank my friend for the energy he is putting into this issue. Again, my people in California are very grateful for what the Senator from West Virginia is doing.

Mr. BYRD. Mr. President, I thank the distinguished Senator, and I thank the people of California for their interest in the subject matter, and they certainly should be interested in it.

No one likes to talk about putting a price tag on national security, but these costs simply cannot be ignored in light of our current sagging economy and given a projected budget deficit of $307 billion for the fiscal year 2004. Remember—remember, Mr. President—this Government is going to have to borrow the money to finance this war. The total price of a war in Iraq could easily add up to hundreds of billions of dollars, even a trillion or more, overwhelming a Federal budget that is already sliding into deep deficits and warping the U.S. economy and impacting the economies of other nations for years to come. And, unlike the gulf war in 1991, many of our allies are unlikely to want to help much in defraying these costs.

Right now, the administration is trying to coax other nations to join the ''coalition of the willing'' by paying them, not by asking them to help us pay for the war. A ''coalition of the willing,'' or a COW for short. It appears to me that the U.S. is the ''cow''—the cash cow in this instance. We are the ones who are being milked.

The administration reportedly has negotiated a multibillion-dollar package of grants and loans for the Republic of Turkey for use of its bases to open a possible northern front against Iraq. The administration is negotiating similar multibillion-dollar packages with Egypt, Israel, Jordan, and other allies in the Middle East. I wonder if Members are aware of the details of any of these deals in the works or their projected costs over time.

I believe the cost of this war will be staggering.

We know that our Nation's most precious treasure, the lives of our young men and women in uniform, will most certainly be threatened. But we do not know how great the risk is because the administration will not talk about its plans.

In addition, the cost in terms of taxpayer dollars will be absolutely enormous. We hear of negotiations ongoing with Turkey that are in the area of $30 billion. We learn of requests from Israel for $12 billion. In addition, Jordan wants to be compensated. We read that negotiations are underway to provide economic assistance to Mexico, Chile, and various African nations, all of which are members of the United Nations Security Council.

Where will this all end? Where? How many nations will be promised American economic assistance just for their tacit support? And how strong is support that can be bought with promises of American dollars? This is no way to operate. This is no way to fight a war.

If the case against Saddam Hussein were strong enough on its merits the United States would not have to buy the support of the international community. If the world truly believes that Saddam Hussein poses an imminent threat, then let the world say so clearly. But do not taint that decision, do not taint the possible sacrifice of American soldiers, sailors, and airmen, by prying open the door to war with a blank check from the American taxpayers.

If war is undertaken without U.N. sanction or broad international support, the United States taxpayer can expect to pay the costs of the war for decades and pay the interest costs for decades more.

And that is to say nothing about the larger macroeconomic costs to the economy. The economic ripples of a war could spread beyond direct budgetary costs into international energy markets through higher oil prices. The psychological effects of a war in Iraq, especially if it initiates new terrorist attacks around the globe, could further scare the already jittery financial markets and rattle consumers.

If the war goes badly—and it could. Who knows? If the war goes badly, either through heavier than expected causalities, protracted bloody urban warfare, massive foreign denunciations, chemical and biological warfare, or major terrorist attacks here and abroad, we may be plunging our economy into unfathomable debt which this nation cannot easily sustain.

But even if one discounts these scenarios as unlikely, and sets them all aside, the potential costs of a limited war in Iraq could continue to pile up for years, depending on the total damage to Iraq, the civilian casualties, and the possibility that the war's effects could spread into other countries.

This is a dangerous and damaging game the administration is playing with the American public—with you, you who are looking through those electronic lenses at the Senate. Glossing over the cost of a war with Iraq may make it easier to win short-term support. But without any serious attention to costs, the American people cannot be engaged in a fulsome public discussion about the eventual wisdom of undertaking this war. Public support cannot be sustained to accomplish our post-war goals in Iraq if the Nation has been misled about the duration and difficulty and costs of such a conflict. We cannot treat the citizens of this Nation as if they are children who must be fed a fairy tale about fighting a glorious war of ''liberation'' which will be cheap, short and bloodless. If the President is going to force this Nation to engage in this unwise, potentially disastrous, and alarmingly expensive commitment, he must lay out all of the costs and risks to the Nation.

Now we will come back to these lines again and again. If I am not here, the American people will still come back to the record that is being written.

What is particularly worrisome is how naively the idea of establishing a perfect democracy in Iraq is being tossed around by this administration. If the administration engages in such a massive undertaking without the American people understanding the real costs and long-term commitment that will be required to achieve this visionary scheme, our efforts in Iraq could end with chaos in the region. Chaos, poverty, hopelessness, hatred—that is exactly the kind of environment that becomes a fertile breeding ground for terrorists.

The administration is asking the American public and the international community to support this war. The administration must also put all of its cards on the table. A list of real risks and down sides do the Nation no good locked in Donald Rumsfeld's desk drawer. They must be brought into the sunshine for the people to assess.

The American people are willing to embrace a cause when they judge it to

be noble and both its risks and its benefits are explained honestly to them. But if information is withheld, long-term political support can never be sustained. Once the order is given and the bombs start falling, the lives of American troops and innocent civilians on the ground hang in the balance. Once ''boots are on the ground,'' concerns about the monetary cost of war necessarily take a back seat. This nation will not shortchange the safety of our fighting men and women once they are in harm's way.

But our people and this Congress should not have to wait until our troops are sent to fight to know what we are facing, including the painful costs of this war in dollars, political turmoil, and blood.

In a democratic-Republic, secrecy has no place. Hiding information from the public to rally support behind a war, at the very time when the government should be striving for maximum trust will eventually undermine our nation's strength. This conflict will be paid for with the people's treasure and the people's blood. This is no time to affront that sacrifice with beltway spin and secrecy.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FEINGOLD. Mr. President, for the past few weeks, we have had a vigorous debate on the floor and in the country on this nomination. I discussed my reasons for opposing Mr. Estrada's nomination before the recess. As I said then, I would probably vote to confirm Mr. Estrada to a lower court. But for this crucial court, at this crucial time, he is not the right person for the job. I have reached that conclusion in part because Mr. Estrada gave us so little to work with in trying to understand what kind of judge he would be. When we are talking about a lifetime appointment to the second highest court in this country, we cannot be expected to take it on faith that Mr. Estrada will be a fair and impartial judge, with no ideological axe to grind. The Senate's role is too important to just ''hope for the best.'' No, when we are asked to confirm a nominee to such a significant post, we have a right to expect that nominee to be forthcoming in answering our questions, and we have a right to expect the administration to be cooperative in providing any information that is relevant to making our decision. That is what the advice and consent process is about. Not some kind of phony ''consultation'', and certainly not a rubberstamp for the President's nominees.

Today I want to respond to some of the arguments that have been raised by those who support the nomination. Many of the arguments come in the form of twisting and misstating the reasons given by opponents, in order to ridicule them. Many have been creating straw men in order to knock them down.

For example, we have heard numerous times that Senators oppose Mr. Estrada because he has no judicial experience, and the answer to that straw man is that many distinguished judges had no judicial experience. That is certainly true. I agree with that. Some great appellate judges had no prior judicial experience. Some of them sat or sit on the DC Circuit.

But those of us who note Mr. Estrada's lack of judicial experience are not saying that that should disqualify him from serving in this position. What we are saying is that his lack of experience means he lacks a record to evaluate, unlike many of the other individuals that President Bush has nominated to the circuit courts, who have served for many years as US District Court judges. At the same time, Mr. Estrada has not been a law professor and written scholarly articles for publication. His lack of judicial experience is part of his lack of a record that we can review in order to see what kind of judge he will be.

That brings me to the Solicitor General memos. In a way, this is really the crux of the problem with Mr. Estrada. Because Mr. Estrada has no judicial experience, because he has not written articles as a law professor, because he is so young and some of his most significant legal experience was as a lawyer in the Solicitor General's office, and because questions have been raised about his performance in that office, we have asked to see the memos that he wrote to his superiors on questions such as whether the United States Government should appeal an adverse ruling to the Supreme Court or whether it should file an amicus brief in a case that the Supreme Court has decided to hear.

This request was originally made by then Chairman LEAHY in May 2002, months before Mr. Estrada had his hearing before the Senate Judiciary Committee. So the claim that the request for these documents is a last minute effort to derail the nomination is patently untrue. We have been seeking these documents for nearly a year now, and the administration has been stonewalling for nearly a year now.

I am afraid I have to say it has also been stonewalling in a really disingenuous way. The administration, echoed by supporters of Mr. Estrada here on the floor, has claimed that our request is unprecedented, that no such memos have ever been turned over to the Senate. One Senator stated unequivocally:

> Never in the history of the Justice Department have those type of materials that are privileged, confidential work product materials been given to this branch of Government or any other branch.

That is a pretty strong statement. It is also untrue. For example, during the consideration of the nomination of William Bradford Reynolds to be Associate Attorney General at the Department of Justice, exactly these kinds of memos—recommendations on appeals and amicus briefs written by line attorneys—were turned over to the Judiciary Committee. Then, during the consideration of the nomination of Robert Bork to the Supreme Court, a large amount of material was turned over to the Committee, including memos written to or from Judge Bork when he served as Solicitor General. In particular, memos to Judge Bork from Judge Frank Easterbrook, who then served in exactly the same position as Mr. Estrada did when he was in Solicitor General's office, were made available to the Senate.

Still the Justice Department disputed the facts and continued to insist that only limited materials were made available during the Bork nomination and other materials must have been leaked. But Senator LEAHY has disclosed a 1988 letter from Acting Assistant Attorney General Thomas Boyd to Senator BIDEN, requesting the return of materials that had been turned over during the confirmation proceedings. Mr. Boyd states:

> [M]any of the documents provided to the Committee, ''reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch.''
>
> We provided these privileged documents to the Committee in order to respond fully to the Committee's request and to expedite the confirmation process.

It is abundantly clear that the Justice Department has provided these kinds of materials in the past, despite their confidentiality. And that is as it should be. I have enormous respect for some of the former Solicitors General who have written to us and given their view that these memos should not be released. But with respect, they are not Senators. They are not accountable to constituents for the votes that they take on whether to confirm judicial nominees. They have never made policy for this body, and unless they run for election in the States where they live, they never will.

The White House and some of our colleagues have also argued that these kinds of memos have not been requested of all nominees who once served in that office or in a similar position in the Department of Justice. True enough. But that only underscores how important our request is. I say again, it is because Mr. Estrada has no judicial experience, because he has not written articles as a law professor, because he is so young and some of his most significant legal experience was as a lawyer in the Solicitor General's office, and because questions have been raised about his performance in that office, that we have asked to see these materials.

The administration's failure to comply with our legitimate request, a request which is strongly supported by precedent in the Judiciary Committee's handling of past nominations, frankly leads to the question of whether there is something to hide in those memos. We will never know until we have a chance to read them. But what we do know is that until they are turned over this logjam will continue.

Now some have made the argument on this floor and in the press that our action in delaying a vote on Mr. Estrada is unprecedented. That is plainly not the case, and again illustrates the amount of distortion that is occurring in this debate. According to CRS, there have been cloture motions filed on 14 judicial nominees since 1980. Just three years ago, cloture votes were required before two of President Clinton's nominees to the Ninth Circuit, Marsha Berzon and Richard Paez, could be confirmed. When these nominations were finally reported from committee after years and years of delay, motions to proceed to their consideration on the floor were defeated by the Republican majority. Over 5 months later, the nominations were finally brought to the floor. The two nominations were considered and debated together, and a cloture motion was required to end the debate on each nominee.

It is true that both the majority leader at the time, Senator LOTT, and Senator HATCH, supported cloture on the nominations. But still, there certainly was a filibuster on those nominees. That is what cloture votes do; they end filibusters. Senator Bob Smith was leading the opposition to the nominees. He put out a press release indicating that he was filibustering to stop them. Late last week, we heard from one Senator that this is the first ''true filibuster'' of a Circuit court nominee. I am still waiting to hear an explanation of what a true filibuster is compared to what happened with Judges Berzon and Paez. Is a ''true filibuster'' only one that seems to have the votes to succeed? That is an interesting definition.

Let us not forget that in so many other cases during President Clinton's term in office, there was no filibuster because his nominees were never given a hearing or a vote in the Judiciary Committee. That is what happened to two nominees to the Circuit to which Mr. Estrada has been nominated. Alan Snyder, nominated by President Clinton in June of 1999, finally had a hearing in May of 2000, but never received a vote in Committee. Elena Kagan, nominated in September 1999, never even had a hearing in the Committee. So how exactly is that fairer treatment than a filibuster? The claims that this nominee is subject to unprecedented unfairness because an up or down vote is not being permitted at this time ring hollow.

It is time for the Administration to face up to what happened over the last six years that President Clinton was in office. The DC Circuit is a very good place to start. There are two more vacancies on that circuit. If President Bush were to resubmit Mr. Snyder and Ms. Kagan's names, the court would remain balanced, and the President could really change the tone of the judicial nominations issue. For now, we are faced with an effort to fill a slot held open for years of a Democratic presidency with a nominee whose views are a mystery. That is not acceptable and we must continue to resist it.

I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEDICARE EQUITY

Mr. FEINGOLD. Mr. President, I would also like to address one of the most important issues facing my state of Wisconsin, as well as many others across the country, the need to restore fairness to the Medicare program.

During any debate of Medicare reform, one of Congress' top priorities should be to reduce regional inequalities in Medicare spending and support providers of high-quality, low-cost Medicare services.

The high cost of health care in Wisconsin is skyrocketing: A recent survey found that the cost of health benefits for employees in Wisconsin rose 14.8 percent last year, to an average of $6,940 per employee. That is 20 percent higher than the national average of $5,758 for workers in businesses with 500 or more employees. These costs are hitting our state hard—they are burdening businesses and employees, hurting health care providers, and preventing seniors from getting full access to the care that they deserve.

One of the major contributing factors to the high cost of care in our state is the inherent unfairness of the Medicare Program. With the guidance and support of people across our state who are fighting for Medicare fairness, I have proposed legislation to address Medicare's discrimination against Wisconsin's seniors, employers and health care providers. The Medicare program should encourage the kind of high-quality, cost-effective Medicare services that we have in Wisconsin. But as many in Wisconsin know, that is not the case.

To give an idea of how inequitable the distribution of Medicare dollars is, imagine identical twins over the age of 65. Both twins worked at the same company all their lives, at the same salary, and paid the same amount to the federal government in payroll taxes, the tax that goes into the Medicare Trust Fund. But if one twin retired to Louisiana or Florida and the other retired in Eau Claire, Wisconsin, they would have vastly different health care options under the Medicare system. The twin in Louisiana or Florida would get much more.

For example, in most parts of Louisiana and Florida, the first twin would have more options under Medicare. The high Medicare payments in those areas allow Medicare beneficiaries to choose between an HMO and a traditional fee-for-service plan, and, because area health care providers are reimbursed at such a high rate, those providers can afford to offer seniors a broad range of health care services.

The twin in Eau Claire does not have the same access to care—there are no options to choose from in terms of Medicare HMOs, and sometimes fewer health care agencies that can afford to provide care under the traditional fee-for-service plan.

How can two people with identical backgrounds, who paid the same amount in payroll taxes, have such different options under Medicare?

They can because the distribution of Medicare dollars among the 50 states is grossly unfair to Wisconsin, and much of the country. Wisconsinites pay payroll taxes just like every American taxpayer, but the Medicare funds we get in return are lower than those received in many other states. Legislation that I and others have proposed will take us a step in the right direction by reducing the inequities in Medicare payments to Wisconsin's hospitals, physicians, and skilled nursing facilities.

Last year, with the introduction my Medicare fairness legislation and the efforts of many other Senators, including both the chair and ranking member of the Finance Committee, we put Medicare fairness issues front and center in Congress. We saw many successes. The Senate Budget Committee approved my amendment to promote Medicare fairness in any Medicare reform package. A wide range of Senators from both parties endorsed my proposal to create a Medicare fairness coalition. The House passed a number of Medicare fairness provisions that were a result of these successes, and both House and Senate leadership endorsed Medicare fairness issues.

Now that we have finally brought these issues the attention that they deserve, we need to build on that momentum to pass Medicare fairness provisions into law. Some of this increased awareness can be seen in the recently passed omnibus spending bill. While I opposed this legislation, I was especially pleased that it contained provisions that take us a step toward fairness in the distribution of Medicare dollars in Wisconsin and other states across the country. By increasing the Medicare payments to small urban and rural providers, we are closer to reducing the inequities that plague the Medicare system.

I hope that these provisions are only the first steps that Congress takes to restore Medicare fairness for Wisconsin and other affected States. Medicare

shouldn't penalize high-quality providers of Medicare services, and most of all, Medicare should stop penalizing seniors who depend on the program for their health care. They have worked hard and they have paid into the program all their lives, and in return they deserve full access to the wide range of benefits that Medicare has to offer.

So I look forward to working with my colleagues to move legislation forward. I believe that we can rebalance the budget, while at the same time encouraging efficient, quality-enhancing Medicare services.

Mr. President, I have one other topic.

SUPPORTING FIRST RESPONDERS

Mr. President, I would also like to take this opportunity to talk about the need for Congress to help first responders do what they do so well: protect our communities in an emergency.

The Department of Homeland Security is creating a massive shift in the Federal Government. Nobody will feel the impact of this shift more than the brave men and women who work in law enforcement, as firefighters, as rescue workers, as emergency medical service providers, and as first responders. We must make sure that these first responders have the resources that they need.

While I commend the administration for raising the funding dedicated to first responders in the President's budget, I am concerned that these new layers of bureaucracy and reorganization could reduce these funding levels or, just as harmfully, put up barriers to first responders actually receiving these funds.

The Federal agencies in the proposed Department of Homeland Security must listen to the priorities of our communities. After all, the needs of first responders actually vary among regions, as well as between rural communities and urban communities. In Wisconsin, I have heard needs ranging from training, to equipment, to more emergency personnel in the field, just to name a few.

So I have proposed legislation, along with my friend from Maine, the chair of the Governmental Affairs Committee, that would promote effective coordination among Federal agencies under the Department of Homeland Security and ensure that our first responders—our firefighters, law enforcement, rescue, and EMS providers—can help Federal agencies and the new Department of Homeland Security improve existing programs and future initiatives.

This is what it would do: It would first establish a Federal Liaison on Homeland Security in each State and coordinate between the Department of Homeland Security and State and local first responders. This office would serve not only as an avenue to exchange ideas, but also as a resource to ensure that the funding and programs are effective.

For example, my hope is that the Homeland Security Department will make programs such as the Fire Act a high priority. The Fire Act provides grants directly to fire departments across our Nation for training and equipment needs. Last year, I visited one excellent example of this program in West Allis, WI, where the department received a grant in 2001 to implement a wellness and fitness program for their firefighters. I am told that it is one of the first departments in the State to meet the goals of this program, and I commend the department for its efforts.

Our legislation would also direct the agencies within the Department of Homeland Security to coordinate and prioritize their activities that support first responders, and at the same time, ensure effective use of taxpayer dollars. As part of this coordination, the First Responders Support Act would establish a new advisory committee of those in the first responder community to identify and streamline effective programs.

Last year, both the original Senate and House homeland security bills lacked the provisions needed to ensure that the new Department of Homeland Security communicates and coordinates effectively with first responders.

During the Senate Governmental Affairs Committee markup of the homeland security bill last year, I was pleased to see the committee added our First Responders Support Act to the legislation. It did so knowing that we would have to reconcile the overlap between our legislation and the language in the chairman's mark creating an office for State and local government coordination. Our amendment, which was approved by the full Senate, did exactly that. Unfortunately, our proposal was dropped from the final bill during conference.

I hope congress can make enactment of this legislation one of its priorities this year. We must be aggressive in seeking the advice of our first responders, and helping them to get the resources that they need to provide effective services. They are on the front lines, and they deserve our support.

In almost any disaster, the local first responders and health care providers play an indispensable role. If the Department of Homeland Security is to be effective, we need to ensure that the resources are delivered to the front line personnel in an effective and coordinated manner. I urge my colleagues to join me in passing this proposal and others to support our first responders.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COLEMAN. Mr. President, I have been a Senator for a little less than 2 months. The same is true for the Presiding Officer. And we ran at a time when I believe the message from the people—and not just of Minnesota but I believe the people in America—was one that it is important the Senate should get things done. The 170th Congress had not passed appropriations bills, had not passed disaster assistance, had not passed a prescription drug benefit for seniors, and had not passed a budget. A lot of serious work needed to be done. That was the message.

We are here now—in a little less than 2 months—and we are caught up in a filibuster. I read about filibusters when I was a kid. This basically means the Senate is spending a lot of time debating the nomination of Miguel Estrada to be a judge in the Court of Appeals for the District of Columbia Circuit, and the distinguished members of the minority party are not going to allow that nomination to get to a vote unless there are 60 Senators who vote for cloture to put an end to the filibuster.

During the course of the discussion about Miguel Estrada, there have been some wonderful presentations on both sides of the aisle about the importance of the Constitution, the very sacred obligation of the Senate to advise and consent on nominations made by the President of the United States on judicial appointments.

In those wonderful discussions talking about this sacred obligation, my fear is that the public may not understand that obligation is not to have 60 Senators vote to confirm a nomination, that to require 60 votes is what is known as a supermajority. The Constitution reserves supermajorities to very specific instances—the approval of treaties—but not for the confirmation of Presidential nominees to the Federal courts. That should take a simple majority.

So what we are faced with today is the very serious issue of an effort to change the constitutional standard for the selection of judges. And for all of us who love this Constitution, who understand its greatness—and I think through Divine guidance given to those who stood before us in chambers and in the Old Senate Chamber—to change the standard for Miguel Estrada is simply wrong.

It is not the right thing to do. What our distinguished colleagues in the minority party should do is the right thing and simply give the Senate a chance to vote on the nomination of Miguel Estrada—vote and say you need 51 votes to confirm this nomination. That is the constitutional standard.

The Web site of one of the most egregious liberal Washington interest groups has a number of troubling statements regarding the nomination and confirmation process for members of the judiciary. One memorandum discusses ''the approaching armageddon on judicial nominations.'' This extreme and inflammatory headline suggests an all-out, no-holds-barred, anything-goes campaign against judicial nominees by

those opposing the President's choices. Another headline on the same Web site demands its members and visitors to ''tell Senators: Filibuster the Estrada nomination.''

I do not believe there has been, in the history of this esteemed body, a filibuster of a circuit judge. I do not believe there has been a partisan filibuster of the type we are experiencing right now in the Senate.

On Wednesday, February 5, 2003, the Washington Post published an editorial referencing this Web site and condemning such tactics and urged a vote on the nomination of Miguel Estrada.

The editorial in the Washington Post correctly points out that a filibuster would be ''a dramatic escalation of the judicial nomination wars.'' It states that Democrats who disagree with the nominee may vote against him, but they should not deny him a vote. The editorial concludes that Mr. Estrada's nomination should not be stalled any longer, stating:

It certainly doesn't warrant further escalating a war that long ago got out of hand.

As I listen to the debate, it seems that there are a lot of feelings that somebody did something in the past and now we are going to pay back today. There was an earlier time of feuds between the Hatfields and the McCoys, and the Earps and the Youngers. That is not the way to act in the 21st century, when we face the challenges of a potential war with Iraq and with a struggling economy and with moms and dads worried about feeding and clothing their kids and sending their kids to good schools. We should not be caught up in this kind of partisan feuding, saying you did something in the past to our nominees, so now we are going to do the same to yours today. Put it aside.

I am a product of the sixties philosophy. Let today be the first day of your life. We are never going to be younger than we are today, Mr. President. I think we have to put the past behind us. I don't know who was at fault in the past. I don't know about other nominees and the time it took them to get to the floor of the Senate, why they were delayed, for whatever reasons. All I know is that, today, Americans are crying out for the Senate to simply get the work of the people done. We can get the work done if we give Miguel Estrada a chance to simply have an up-or-down vote. That is all it is.

We should not change the constitutional standard. We should not be requiring 60 votes to confirm a judicial nominee. That is not what the greatness of this institution is about. That is not what the Constitution, which has preserved this country and set the standard for democracy, intended.

Let us have a clear understanding of what a modern day filibuster means. Those advocating this obstructionist tactic aren't demanding the opportunity for extended debate; that is already available to all Senators. The practical matter of a filibuster is to prevent a vote on the nominee, unless cloture is obtained. Of course, cloture requires 60 votes. As I said before, those calling for a filibuster on this nominee are demanding a supermajority vote. That is not what the Constitution says. That is not what the Constitution dictates. That is not the precedent and pattern we should be following. This is against the traditions and practices of this body. In fact, in only one instance did the Senate reject cloture and defeat a judicial nominee. That was in 1968, on the nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court.

As I noted before, that was a bipartisan filibuster—not the party-line filibuster we are seeing waged here today against Mr. Estrada.

I agree with the previous chairman of the Judiciary Committee, a Democrat, who said in a speech on the Senate floor—I believe it was the Senator from Vermont:

I have stated over and over again on this floor . . . that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported, that I felt the Senate should do its duty.

Let the Senate do its duty. Let those who oppose the nomination of Miguel Estrada have their right to cast their vote, have a right to have their say, for whatever reasons. It is within their discretion to choose their reason to say no. On the other hand, let us follow the dictates of our Constitution and not change the constitutional standard. Let us give Miguel Estrada the opportunity simply for an up-or-down vote, and let a majority of Senators in the Senate—and I believe that a majority, which would be a bipartisan majority, not just folks of one party, but distinguished members of the minority party who support the nomination, would not change the constitutional standard.

During the course of this debate, there have been many serious misrepresentations of the record on Mr. Estrada. I want to address in some detail one of the most serious distortions, which concerns the answers that Mr. Estrada gave to questions that members of the Judiciary Committee asked him.

The charge being leveled against Mr. Estrada is that he did not answer questions put to him in general, and he did not answer questions about his judicial philosophy in particular. I have to say, that charge is pure bunk.

I sat here and listened as some of my colleagues on the other side of the aisle said he didn't answer questions. I have the transcript in front of me. He was there for a full day. He answered question after question. He answered followup questions, written questions. He answered the questions.

Again, it is important to remember the circumstances under which this hearing took place. That hearing was held September 26, 2001, chaired by my Democratic friend, the senior Senator from New York, with whom I went to grade school and high school in Brooklyn. Both Democratic and Republican Senators asked scores of questions, which Mr. Estrada answered. If any Senator was unsatisfied with Mr. Estrada's answers, every member of the committee had an opportunity to ask Mr. Estrada followup questions. I believe only two of my Democratic colleagues did that.

A number of questions that Mr. Estrada was asked directly or indirectly tried to pry from him a commitment on how he would rule on a particular case. Previous judicial nominees who were confirmed by the Senate have rightly declined to answer questions on that basis, as Mr. Estrada did. Let me give you some examples.

In 1967, during his confirmation hearing for the Supreme Court, Justice Thurgood Marshall responded to a question about the fifth amendment by stating:

I do not think you want me to be in a position of giving you a statement on the Fifth Amendment and then, if I am confirmed and sit on the Court, when a Fifth Amendment case comes up, I will have to disqualify myself.

If I may digress, one of the other charges against Mr. Estrada is that he did not have judicial experience. During the course of this debate, it has been highlighted again and again that many distinguished judges—Supreme Court Judges and circuit court judges—did not have judicial experience before they were appointed to the court. Mr. Estrada, in fact, clerked for both a Federal court judge and U.S. Supreme Court Justice Anthony Kennedy. When Thurgood Marshall was appointed, I believe, to the District Court of Appeals, he did not have prior judicial experience. I think it was Justice Holmes who did not have it. I could go on and on. So that charge, too, is pure bunk.

During Sandra Day O'Connor's confirmation hearing, the Senator from Massachusetts, the former chairman of the Judiciary Committee, defended her refusal to discuss her views on abortion. He said:

It is offensive to suggest that a potential justice of the Supreme Court must pass a presumed test of judicial philosophy. It is even more offensive to suggest that a potential justice must pass the litmus test of any single-issue interest group.

It is interesting, if you look at Mr. Estrada's response on the question of Roe v. Wade, he said very clearly in response to a question of the Senator from California that he has his views, but his view of the judicial function ''does not allow me to answer that question.'' But he said he has a personal view on the subject. Again, he goes back to his view of judicial function. Then he goes on to say:

And the reason I have not done any of those things is that I view a system of law in which me as an advocate and possibly if I am confirmed as a judge, have the job of building on the wall that is already there, not to call it into question. I have no particular reason to go back and look at whether that decision was right or wrong as a matter of law, as I would if I were a judge that was hearing the case for the first time.

Then he goes on to say:

It is there. It is the law and it has subsequently been refined by the Casey case, and I will follow it.

The Senator from California asked:

Do you believe it is settled law?

The answer is:

I believe so.

So again, he has done what other nominees have done and he will not discuss his personal feelings. He will not discuss his personal philosophy on that issue, but he says it is settled law—settled law.

Likewise, Justice John Paul Stevens testified during his confirmation hearing:

I really don't think I should discuss this subject generally, Senator. I don't mean to be unresponsive, but in all candor, I must say there have been many times in my experience in the past 5 years when I found that my first reaction to a problem was not the same as the reaction I had when I had the responsibility of decisions, and I think if I were to make comments not carefully thought through, they might be given significance they really did not merit.

Justice Sandra Day O'Connor was confirmed. Justice John Paul Stevens was confirmed.

Justice Ruth Bader Ginsburg also declined to answer certain questions, stating:

Because I am and hope to continue to be a judge, it would be wrong for me to say or to preview in this legislative chamber how I would cast my vote on questions before the Supreme Court. Were I to rehearse here what I would say or how I would reason on such questions, I would act injudiciously.

In addition, as my colleague from Nevada yesterday noted, Justice Ginsburg just last year said in dissent in the case of Republican Party of Minnesota v. White:

In the context of the Federal system, how a prospective nominee for the bench would resolve certain particular contentious issues would certainly be ''of interest'' to the President and the Senate. . . .But in accord with a longstanding norm, every Member of this Court declined to furnish such information to the Senate and presumably to the President as well.

I believe I recall in reviewing the transcripts of the hearing of Mr. Estrada—I am not a member of that committee, but I have taken the time to review some of the transcripts—he was asked by one of my distinguished colleagues on the other side of the aisle whether he was a strict constructionist. I believe his response was he was a fair constructionist.

A further discourse by my distinguished colleague from the other side of the aisle, I think from North Carolina: Did the President talk about strict constructionist? I am paraphrasing. Mr. Estrada came back and said: I did not talk about that with the President, but he talks about being a fair constructionist.

That is the kind of judge the people of the United States want to sit on the Circuit Court of Appeals.

I also note, in contrast to the characterization of my colleague from Nevada, however, Justice Scalia in his majority opinion did not take issue with that description, as Mr. Gonzales pointed out in his letter. Justice Scalia said:

Nor do we assert that candidates for judicial office should be compelled to announce their views on disputed legal issues.

Like these previous nominees, all of whom the Senate confirmed, Mr. Estrada refused to violate the code of ethics for judicial nominees by declining to give answers that would appear to commit him on issues that he would be called upon to decide as a judge. Again and again, he provided answers in direct response to questions that make his judicial philosophy an open book.

Let me share some specific examples. Responding to a question to identify the most important attribute of a judge, Mr. Estrada answered that it was to have an appropriate process for decisionmaking. That, he said, entails having an open mind, listening to the parties, reading their briefs, doing all the legwork on the law and facts, engaging in deliberation with colleagues, and being committed to judging, as a process that is intended to give the right answer.

These are not extreme views. I do not think we could ask any more from any judge.

When asked about the appropriate temperament of a judge, he responded that a judge should be impartial, openminded, and unbiased, courteous, yet firm, and one who will give ear to people who come into his courtroom. These are the qualities of Miguel Estrada. He testified that he is and would continue to be the type of person who listens with both ears and would be fair to all litigants. Again, that phrase he used, he would be a fair constructionist.

Mr. Estrada was asked a number of questions about his views and philosophy on following legal precedent. Let me highlight a bit of that exchange.

Question:

Are you committed to following the precedents of higher courts faithfully and giving them full force and effect even if you disagree with such precedents?

Answer:

Absolutely, Senator.

Question:

What would you do if you believe the Supreme Court or the Court of Appeals had seriously erred in rendering decision? Would you apply that decision or use your own judgment of the merits, or the best judgment of the merits?

Answer:

My duty as a judge and my inclination as a person and as a lawyer of integrity would be to follow the orders of the higher court.

Question:

And if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, to what sources would you turn to for persuasive authority?

Answer:

In such a circumstance, my cardinal rule would be to seize aid from any place where I could get it—related case law, legislative history, custom and practice, and views of academics on analysis of law.

That is the kind of judge we want. That is the kind of judge I think the Constitution intended us to have when it gave us this solemn responsibility of advising and consenting on judicial nominations. Again, not by changing the constitutional standard, but advising and consenting, allowing a majority of Senators in the Senate to advise and then consent on a nominee presented by the President but not requiring a supermajority.

These exchanges I have laid out clearly illustrate Miguel Estrada's respect for law and his willingness and ability to faithfully follow the law.

He further testified, in response to other questions:

I will follow binding case law in every case. Even in accordance with the case law that is not binding, but seems instructive on the area, without any influence whatsoever from any personal view I may have about the subject matter.

This is what we expect judges to do. I can see no good reason why anyone would be opposed to a nominee who promised to follow the law, a nominee who is highly qualified, a nominee who the American Bar Association in rating judges gave a unanimous—every person on the committee, and I presume they were not all conservative Republicans, every person on that review committee unanimously gave him the highest rating, the highest recommendation, which many of my distinguished colleagues on the other side of the aisle have called the gold standard. That is the way in which we should measure judges.

Now we have a judge in front of them who has passed the gold standard unanimously, who is highly educated, who at 17 years of age came to this country from Honduras and did not speak English well, graduated magna cum laude from Columbia, graduated magna cum laude from Harvard Law School, was editor of the Law Review, clerked for Federal and Supreme Court judges, worked, and came back to public service. Talk about the American dream.

Miguel Estrada, being given such great opportunity of education, is coming back and saying: I am going to give back to the community; I want to work in public service.

I had the chance to serve as solicitor general of the State of Minnesota. It is a solemn, high honor to represent your State or to represent your country, to work for your State or your country, to uphold its constitution.

It is important to note that every living former Solicitor General of the United States, four of whom are Democrats, stand with Miguel Estrada on one of the other issues that my distinguished colleagues from the other side have raised. They said they want some of his opinion papers. Yet Democrat Solicitors General—every one of them—say, no, that is not appropriate;

those should not be given up. That is not Miguel Estrada saying that. Those are the Solicitors General of the United States. Again, that is another argument that is a bogus argument, if I may be blunt.

When asked about the role of political ideology in the legal process, Mr. Estrada replied with a response that, in my view, was entirely appropriate and within the mainstream of what all Americans expect from their judiciary. He said:

[A]lthough we all have views on a number of subjects from A to Z, the first duty of a judge is to self-consciously put that aside and look at each case with an open mind and listen to the parties. And, to the best of his human capacity, to give judgment based solely on the arguments of law. I think my basic idea of judging is to do it on the basis of law and to put aside whatever view I might have on the subject to the maximum extent possible.

When asked about his views on interpreting the Constitution, Mr. Estrada was forthright and complete in his responses. For example, in exchange regarding the literal interpretation of the words of the Constitution, Mr. Estrada responded:

I recognize that the Supreme Court has said on numerous occasions in the area of privacy and elsewhere that there are unenumerated rights in the Constitution. And I have no view of any sort, whether legal or personal, that would hinder me from applying those rulings by the Court. But I think the Court has been quite clear that there are enumerated rights in the Constitution. In the main, the Court has recognized them as being inherent in the right of substantive due process and the liberty clause of the fourteenth amendment.

Mr. Estrada was asked questions about the appropriate balance between Congress and the courts. His answers made clear his view that judges must review challenges to the statutes with a strong presumption of the statute's constitutionality. For example, in responding to a question about environmental protection statutes, he stated:

Congress has passed a number of statutes that try to safeguard the environment. I think all judges would have to greet those statutes when they come to the court with a strong presumption of constitutionality.

At the same time, he recognized that as a circuit court judge he would be bound to follow the precedent established by Lopez and other Supreme Court cases. So it is clear from the record that Mr. Estrada did answer the questions put to him at his hearing.

His judicial philosophy is an open book. But if my Democratic colleagues are still inclined to vote against him, misguided as I believe that choice to be, then they should have that right. Let them vote against him. Vote for him, vote against him. Do what their conscience dictates. Just vote. Do not change that magnificent, most wonderful constitutional standard that has guided us and kept this country together for over 200 years. Allow the Senate to exercise its duty. Allow each Member to vote their conscience. Just vote and end this filibuster.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, I take this opportunity to address the Estrada nomination and a couple of other issues that the people in my State care a lot about.

Before he leaves, I wanted to say to my friend from Minnesota that I know he was not in the Senate during the last filibuster on the court nominee—actually, there were two including the Abe Fortas nomination in the 1960s—and they occurred in the year 2000. They were launched by Members of the Republican side of the aisle, and they were directed at a woman named Marcia Berzon and a man named Richard Paez.

In addition to the filibuster——

Mr. COLEMAN. Madam President, will the Senator from California yield?

Mrs. BOXER [continuing]. There was actually a vote to indefinitely postpone one of those nominees, the Hispanic nominee, Richard Paez.

Mr. COLEMAN. Madam President, will the distinguished Senator from California yield for a question?

Mrs. BOXER. I would be delighted to.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Minnesota.

Mr. COLEMAN. I ask the distinguished Senator from California, is it not true that in those instances when she talks about ''filibusters''—and I was not here, but I understand that those ''filibusters'' did not last more than a day or two—that in fact both of those nominees had a chance to be voted on by this body. Is that true?

Mrs. BOXER. My friend is incorrect. Here is what happened. It took 4 years, I say to my colleague, to get the Republicans to bring the nomination of Richard Paez to the floor of this Senate. How do I know? Because I had recommended Judge Paez first for the district court, where he got immediate approval.

I would like to answer my friend before I yield, and I will be glad to yield to my friend all night long, believe me, if he wants to stay and engage. So relax and we will get to his questions.

My friend was not here. It took 4 long years to get the Republicans to relent. This is Republicans, the Senator's party, who voted to seat him on the district court unanimously. When he was nominated for the circuit court, it took 4 years. There was extensive questioning back and forth, written questions, oral questions. Then there was a filibuster. My friend says it only lasted 2 days. It was 4 years and 2 days.

I say to my friend, the only reason in the world that filibuster was ended is because we had the votes to stop it. The Senator does not have the votes to stop this filibuster. If he did, it could be done in a minute. The reason there are not the votes is because this man will not answer questions, despite the fact that my friend read some answers. I have a lot of other things to put in the RECORD tonight that will challenge that.

Before he leaves, I say to my friend, in answer to his question and before I yield further, this was a clear filibuster. I am going to give a quote.

I must confess to being somewhat baffled that after a filibuster is cut off by cloture the Senate could still delay a final vote on the nomination.

I say to my friend, who called what happened to Richard Paez a filibuster? None other than the Senator's chairman, ORRIN HATCH. It is in the CONGRESSIONAL RECORD.

I am glad to yield to my friend for a further question.

Mr. COLEMAN. Madam President, I ask the distinguished colleague from California again, in both instances is it not true that cloture was filed—we are talking about filibuster, not 4 years but filibuster debate on this floor—and both nominees were confirmed after cloture was invoked?

Mrs. BOXER. I say to my friend, the day this nomination was brought to the floor, the Republican side could have filed cloture, just as we did, but they are choosing not to do it. There can be a vote on cloture today. It could be tomorrow.

Not only that, when this man answers questions, the vote is going to be won. The Senator is going to have his vote.

I have been around a long time in public life, 10 years in the House, and 10 years in the Senate. I have never seen such a systematic plan not to answer basic questions. Can anyone imagine a man who cannot answer a question if there was ever a Supreme Court case that he disagreed with? I daresay I do not know anyone in the country, lawyer or not, who agrees with the Dred Scott decision. I do not know any person who is willing to say now that he believes separate but equal, Plessey v. Ferguson, was rightly decided.

This man cannot even say which Justice, dead or alive, he would emulate most. It is unbelievable. Except when it is put in the context of who was advising this man, and we have seen it time and again on the floor. They basically said: Do not answer any questions. This is a lifetime appointment. Do not blow it.

Mr. COLEMAN. Madam President, will the distinguished Senator from California yield for two more questions?

Mrs. BOXER. Absolutely.

Mr. COLEMAN. Is it not true the Republicans filed cloture for both of the distinguished judges my colleague from California has mentioned, both Judge Paez and Judge Berzon? Secondly, if that is true, I ask my distinguished colleague from California if she would vote for cloture and support putting an end to this filibuster on the nomination of Miguel Estrada.

Mrs. BOXER. The bottom line is who can file cloture? The Democrats can file cloture on this nomination. The question is, Was there a filibuster? My friend stood up and said there has been no filibuster since Abe Fortas in the

1960s, when his own chairman, ORRIN HATCH said:

I must confess to be somewhat baffled that after a filibuster is cut off by cloture the Senate can still delay a final vote on the nomination.

By the way, there was a filibuster on Marsha Berzon. My friend ought to know, in addition to the filibuster, after we had won the cloture vote on the Paez nomination, there was an incredible motion filed to indefinitely postpone the vote on the nomination. Imagine, there is this fight; it lasted 4 years and several days on a filibuster. We win this, we get the votes, and then there is a motion from a Republican to indefinitely delay the vote, and even Senator HATCH was stunned. He said he was baffled that could even happen.

So for the Senator to say there has not been a filibuster since the 1960s on a judge is false. His own chairman admitted there was a filibuster.

Not only did his side launch a filibuster—my friend was not here; I don't mean to take it out on you—but as someone who knew how fine these two nominees were, they faced that filibuster. They answered the questions over and over again and finally got a vote.

That is the system here. It is misleading to the American public to hear this day in and day out. ''This is unprecedented to have a filibuster.'' What is unprecedented is that we have the votes to keep it going. You did not have the votes on your side to keep it going.

If my friend has no further questions, I will return to my original statement.

Mr. COLEMAN. Madam President, I have no further questions for my distinguished colleague from California.

Mrs. BOXER. I thank my friend.

The point I make tonight, among several, is that we have been charged—those who want more answers from Miguel Estrada—with doing something that has never been done before when, in fact, in the year 2000, two nominees to the Ninth Circuit Court were filibustered and one of the two was not only filibustered, but after he won cloture there was a motion to indefinitely postpone the actual vote on his nomination. I had never seen that. I hope I never see it again. The fact is, there have been two filibusters led by Republican Members and those were defeated.

The second fact is that one of those particular individuals was the first Mexican American to serve on the Central District Court of California and the Republicans held him up for 4 years before we were able to break the filibuster.

It was quite a situation. My friend from Minnesota said—I don't want to misquote him—something like ''the judicial philosophy of this nominee is an open book,'' I think is what he said. It may be an open book, but it looks like this. This is the book. There is nothing on it.

When a candidate cannot say if there was ever a Supreme Court case with which they disagreed, this is going above and beyond stonewalling; or cannot say what Justice, dead or alive, he would emulate most, this is beyond stonewalling.

In my State we are very fortunate. We have reached agreement with Republicans in our State. We have a wonderful selection process for judicial nominees for the district court. Those individuals come before us and are screened by a joint committee. It is a great process. They answer questions. There are votes taken. Then Senator FEINSTEIN and I make a recommendation. It is a bipartisan process.

This is the point: It is working. And it is a participatory process from both parties and both branches of government. I believe questions ought to be asked and answered and Senators have a right to ask questions and Senators have a right to have those questions answered. It is pretty simple.

I started to talk about Judge Paez who made history as a Hispanic because I wanted to make the point for the Senate that he was treated in a way that was totally outrageous, having to wait 4 years to get a vote. He hung on because of his true grit—hearing after hearing; 7 months his nomination languished in 1998. The Republican majority refused to bring him up for a vote. All we were asking for was a vote. And we were refused.

In 1999, Judge Paez was nominated for the third time, and 6 months later the Judiciary Committee approved his nomination, but again we could not get the nomination up for a vote. Finally, when the nomination was brought up after more than 1,500 days, it was filibustered.

My colleagues say again and again it was not. Senator HATCH, the chairman of the Judiciary Committee, said it and it is in the CONGRESSIONAL RECORD. This was a filibuster. We had to get cloture. When you have to get cloture, there is a filibuster. That is as simple as it is. We had to get 60 votes.

If my Republican friends want to end this, tell the nominee to answer the questions. And believe me, he will get an up-or-down vote and the chips will fall where they fall.

It is very clear to me when I look at the way Judge Paez was treated, Marsha Berzon, Margaret Morrow, and a whole slew of others who were nominated and eventually confirmed, they had to answer question after question after question. I will get to that in a minute, the type of questions that Margaret Morrow had to answer just to become a district court judge.

Let's go to the floor of the Senate and take you back to the year 2000 to this filibuster against Marsha Berzon and against Judge Paez. Let me quote Senator Smith, that is Bob Smith, of New Hampshire, then Senator: ''it is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez.''

And he goes on to say: ''So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role.''

This is a Republican, leading the filibuster, against Clinton nominees for the circuit court. He says: ''don't criticize our right to do these things and don't say things didn't happen that did happen.''

And he goes on, more Bob Smith, Republican from New Hampshire, one of the leaders of the filibuster, along with Senator ALLARD, Senator BROWNBACK, Senator BUNNING, Senator CRAIG, Senators DEWINE, ENZI, FRIST, GRAHAM, HELMS, HUTCHINSON, INHOFE, MURKOWSKI, and SHELBY. And Bob Smith said:

Don't come here on the floor and tell me that if I want to block Judge Paez or Judge Berzon, somehow I'm going down some new path. I am not going down any new path. I am following the tradition and precedent of this Senate.

That was Republican Bob Smith, one of the leaders of the filibuster, against two judges, one Hispanic, nominated by President Bill Clinton for the Ninth Circuit Court.

Senator Bob Smith continues:

We have a responsibility to make darn sure these judges are going to represent the views of the majority of the American people in terms of the law. I intend to do that as long as I can stand here to do it.

And the Republican Bob Smith continues, one of the leaders of the filibuster, against Hispanic judge Richard Paez. It took him 4 years to get a vote. Bob Smith, Republican:

When a nominee has some controversy about him or her, if it gets to the floor, there are normally quite a few discussions; i.e., a filibuster.

Now this goes on. I am shocked that my friends on the other side of the aisle didn't read recent history—in the year 2000. Here it goes on. What were the reasons for the filibuster? According to Senator Smith, it was because—what? He didn't get answers to questions.

Let me quote former Senator Smith again, leading a filibuster against a Hispanic judge and Marsha Berzon, two qualified appointees. They got the top rating. They were put up by Bill Clinton.

I think those questions ought to be answered. I think we should know the answers to those questions about what happened before we put this person on the circuit court.

Let me say that again. A Republican colleague of yours, that side of the aisle, leading the charge against these Clinton nominees, leading a filibuster:

I think those questions ought to be answered. I think we should know the answers to those questions about what happened before we put this person on the circuit court.

More quotes from Bob Smith, in the CONGRESSIONAL RECORD:

Filibuster in the Senate has a purpose. It is not simply to delay for the sake of delay. It is to get information.

It is to get information. And do you know what? I disagreed with the filibuster that was led then. It went on

and on until they didn't have the votes anymore and we had the votes. You could say: What goes around comes around.

Senators on the other side of the aisle launched a filibuster against two of President Clinton's nominees for the Ninth Circuit Court, with the highest qualifications, and there were those on the other side of the aisle who believed they didn't answer questions. They launched a filibuster on that ground, and we had to get the votes. And you have to get the votes. That is the way it is here.

We were able to get the votes because—guess what—our nominees answered the questions. They answered the questions, every question. I had worked to help get Margaret Morrow to a district court judgeship. I want to tell you, Margaret Morrow waited 2 to 3 years to get a vote for district court. Do you know what she was asked? She was asked a question that was so abhorrent, I could not believe it. She was asked by one of the Senators on the Republican side of the aisle how she voted for the last 10 years on referenda that were on the ballot in California.

Madam President, I know you are not an expert on California. I can tell you, there were hundreds and hundreds of these referenda, and they were on some tough issues for everything you can imagine.

No. 1, I always thought this was a secret ballot. When you go in the voting booth it is between you and yourself; you are going to decide these issues. That is No. 1.

No. 2, this was an impossible request. How could you even remember all these issues, how you voted on them?

So we went to this particular Senator and said: Senator, this is not fair. This is a secret ballot—please. But he wouldn't relent. But he relented to this degree. He said: OK, we won't go back 10 years, just give us the 10 most controversial votes.

She did. She did. She respected the process enough, she even went so far as to answer those questions which, in my opinion—I don't know what I personally would have done. I truly don't know. But I know I told her, if she felt she could do it, do it, because a Senator was asking.

That is an amazing comparison, compared to: Can you name any Supreme Court Justice who would emulate or any Supreme Court case that you disagree with? Those are conventional questions asked over and over again.

As far as memoranda from the Solicitor General's Office are concerned, there is precedent for that. There is precedent for that. I will give you the people who turned over these previously confidential internal documents. I give the names for the record: Robert Bork, William Bradford Reynolds, Benjamin Civiletti, Stephen Trott, Judge William Rehnquist. These people turned over previously confidential internal documents. Do you know why? I think they respected the Senate enough to say: Do you know what? I could just argue legalese with you, but you have a very important job of advice and consent, and we are willing to give you these memoranda. So there is precedent for that.

I am stunned. We went through the RECORD and my staff pointed out the comments that were made on this floor by Senators over and over again, referring to the fact that they were filibustering Judge Paez, they were filibustering Marsha Berzon. And then to hear there hasn't been a filibuster here since the 1960's—I don't know what to say. It is stunning to me.

The fact that we beat it back, that means it is not a filibuster? You get the votes, you beat it back; is it then not going to be a filibuster? I have taken to the floor tonight because I am incredulous on the point. After seeing these words in the RECORD myself, with my own eyes, after hearing Senator HATCH, who is leading the charge and telling us this is unprecedented, what we are doing, this is unfair to someone, he himself referring to what happened to Richard Paez as a filibuster.

Bob Smith not only referred to it as a filibuster that he was actually leading, but that he was leading in order to get information. You could say we took a page out of the book of the Republicans. We didn't. Because we are willing to say we will vote for cloture when he turns over the information. I never heard, frankly, any of them at that time say they were willing to allow a vote if there were more questions answered because, frankly, every question was answered that you could come up with. There wasn't anything else you could know about those nominees—what they thought, or what they dreamed about, or what they wanted to do, or what they believed, or whom they admired, or what meetings they went to. It was extraordinary.

I think it was Marsha Berzon who was asked the question—she was on the board of an organization. They said to her: We want to know everything that happened at every meeting of that organization, whether you went to the meeting or not.

It took her hours. Why? She respected the role of the Senate to advise and consent. It is in the Constitution, and she understood that, and Miguel Estrada should understand that. I don't care who trained him not to say anything. We have those quotes all over the place. I have seen one saying: Don't answer any of these questions; this is a lifetime opportunity; don't let them see who you are. He was trained not to answer questions.

He ought to respect the Senate. I know the members of the Judiciary Committee on our side of the aisle, and I know the members on the other side. I know they work hard. They have a lot of pressure on them on both sides. When my colleagues tell me they were stunned at the stonewalling they received, I believe them because, by the way, I read some of the answers Miguel Estrada put into the record. I will give you questions and answers here. These are questions asked by Senator SCHUMER:

Question:

Other than cases in which you were an advocate, please tell us of three cases from the last 40 years of Supreme Court jurisprudence you are most critical of.

Answer:

I'm not even sure that I could think of three that I would be—that I would have a sort of adverse reaction to, if that's what you are getting at.

Question:

So, with all of your legal background and your immersion in the legal world, you can't think of three, or even one single case that the Supreme Court has decided that you disagree with?

Answer:

I don't know that I'm in a position to say that I disagree with any case that the Supreme Court has ever ruled on or that I think the court got it right.

Question:

I'm not asking how you approach cases. That's a legitimate question and some have asked it. I want to know how you feel about cases. And you have said more broadly than any other witness I have come across—you have given us virtually no opinion on anything because it might come up in the future.

Answer:

But the problem is the same, Senator Schumer, because taking case A and looking at whether the court got it right or whether I think they got it right I have only the benefit of the opinions. I haven't seen the litigants.

The litigants have been dead for a long time in Dred Scott. But, for God's sake, we ought to know. You can't say that slavery is wrong; that you disagree with that decision? You can't say separate but equal was wrong because you didn't know the litigants?

Where are we? I am stunned.

He said the case is ruled on but he didn't get to see what made it into the opinion.

This is outrageous. He didn't see what made it into the opinion; the court ruled that slavery was constitutional and he didn't disagree with it? He has to meet the litigants? I am stunned.

The Senate has a very sacred job. It is in the Constitution. It doesn't say roll over and play dead when a President picks a nominee to a court. In fact, the Founders disagreed over who should have the responsibility to choose justices. And they came out with this very balanced decision of equal power. Presidents do not like that. I can tell you. I don't know one President who likes the fact we have this advise and consent role. It is very annoying to the executive branch that we are here. I don't care whether they are Democrats and Republicans.

I say that when our constituents sent us here they want us to do the job we swear to do. We hold up our hand here on the Bible and swear to uphold the Constitution. The Constitution says advise and consent on judicial nominees.

It doesn't say roll over and play dead. It doesn't say, oh, give them a break. It doesn't say that. We have a lot of other things to do. It doesn't say that. It says the Senate shall advise and consent.

At home in California, the way people pick district court nominees, it is true—we advise and consent. I have to say there are a lot of people who do not like it. Some conservative groups in California are saying they do not like the way we are doing it. But it is fair. We are appointing moderate Republican judges to the district bench. That is the way the President said he wanted to do it. We are able to do it because in our State we have an agreement where Democrats and Republicans sit side by side and choose. We have two Democratic Senators. That is why this happens.

But if the President is going to send us judicial nominees who won't answer questions, he is not going to get very far. It isn't going to work. Frankly, from my perspective, if people are off the charts on the right wing, I am not going to vote for them. I will not filibuster them. Once they give us the information, I am ready to vote. I will retain my right for a Supreme Court Justice, however, on that point on the filibuster. But, in general, if people answer questions, I will vote no. But I want the answers. I don't want a judicial selection process that excludes the Senate. It is the worst thing that can happen in this country.

If you look around, it is the courts that have stood up for the rights of our people—free speech, freedom of religion, freedom of the press, civil rights, human rights, environmental rights, so many rights that we hold dear, and the right to choose.

Madam President, you and I have worked hard on that. If we didn't have a court that found in the early stages of a pregnancy a woman has the right to choose, I don't even know where we would be for women. The courts have held the line. We know it is very shaky right now.

The courts play a very important role. It is part of the check and balance in our society. It seems to me, if we think that we don't have enough information and just sit back and say it would be a lot easier to let it go, I will vote no to let it go. I don't think that is right for those who come here.

Bob Smith, a Republican from New Hampshire, said he didn't have enough information. I disagreed with him. We beat him on the filibuster. But there was a filibuster. I think recent history is showing us that there is precedent for asking the important questions.

I wish to say one more thing about the Paez nomination. After we won on the filibuster of both Marsha Berzon and Richard Paez, there was a motion made by a Republican Senator to indefinitely postpone the final vote on one of the two, the Hispanic, Richard Paez. It was stunning. It was unprecedented.

Let me make a statement. I believe it is a precedent that never should be occurring here again because the whole purpose of a filibuster is to determine whether you are going to move ahead on a vote. Once there is no filibuster, you have to have a vote. Then we had this intervening motion about indefinitely postponing the vote. It just undercuts what cloture is supposed to be about. I thought that was unbelievable.

Basically a Senator wanted to kill the nomination even after we had won cloture. That was so unprecedented that Senator HATCH himself said he had never seen it. He had never heard of it, and he was perplexed. He was baffled by it.

Let me quote Senator SESSIONS who moved to stop the final vote on this Hispanic Judge, Richard Paez, after we won cloture. He said:

> I move in a postcloture environment to postpone indefinitely the nomination of Richard Paez—

Listen to this—

> in order for this body to get the answers I believe every Senator deserves with regard to the concerns I have raised about Judge Paez over the last several days.

On Judge Paez, because this Senator thought he didn't have the information after 4 years, after pages of questions, after cloture was invoked then he did something unprecedented and moved to indefinitely postpone the final vote.

At that time, Senator HATCH was perplexed. I was certainly perplexed. Colleagues were amazed. And here is in full what Senator HATCH said at that time.

> I have served a number of years in the Senate, and I have never seen a ''motion to postpone indefinitely'' that was brought to delay the consideration of a judicial nomination post-cloture. Indeed, I must confess to being somewhat baffled that, after the filibuster is cut off by cloture, the Senate could still delay a final vote on a nomination.

Senator HATCH was right on the point. He called the filibuster a filibuster at that time. He was baffled by the kind of a postfilibuster-filibuster in the guise of postponing the final vote. Clearly, we had to get the votes for Judge Paez, and we did. And he is serving and doing us all proud, I might say, on the Ninth Circuit right now.

IRAQ

Mrs. BOXER. Madam President, I have a couple of things to say about another subject in a brief period. It has to do with the issue of Iraq.

I spent a week during the last break in California and doing several events—many events, doing the normal things you do when you go home; going shopping, taking a walk in the park and around the neighborhood. I don't think I have ever seen my people in California as distressed and on edge and anxious as they are at this particular point in our history.

I want to tell you that this cuts across party lines.

As a matter of fact, there was a poll in the paper today about the views of Californians very much concerned about going to war. My constituents are saying: Senator, is there any way in your mind that the President will not take this country into war? And my answer—because I am searching for it; the President says he has not made a decision—but to be as honest as I can, I say: Here is what I think on that matter. If the true goal is to disarm Saddam Hussein and Iraq, then there is a chance that this could be resolved short of war. But if the true desire is to replace Saddam Hussein, have a regime change, unless Saddam Hussein agrees to go—which would be a wonderful prospect—I do not see how you get there.

The people in my State are very concerned.

Then they say: Well, Senator, do inspections really work? And I tell them that the facts are out there, that in fact there were more weapons of mass destruction dismantled after the gulf war than there were by our bombs.

I asked for the list of weapons of mass destruction that were in fact destroyed after the Gulf war. I am going to read the list of weapons that were destroyed during the inspections.

In the missile area: 48 operational long-range missiles, 14 conventional missile warheads, 6 operational mobile launchers, 28 operational fixed launchpads, 32 fixed launchpads under construction, 30 missile chemical warheads, other missile support equipment and materiel, supervision of the destruction of a variety of assembled and nonassembled supergun components.

In the chemical area: 38,537 filled and empty chemical munitions were destroyed by the inspectors, 690 tons of chemical weapons agent, more than 3,000 tons of precursor chemicals, 426 pieces of chemical weapons production equipment, 91 pieces of related analytical instruments.

In the biological area: an entire biological weapons production facility called Al-Hakam, a variety of biological weapons production equipment and materiel.

So the fact is, the inspectors discovered and dismantled more weapons of mass destruction than were in fact destroyed by our bombs.

Sadly, there was a period where there were no inspectors in Iraq. And I do not trust, for a minute, that Iraq did not start to rebuild these stocks. The fact is, Saddam Hussein must be disarmed. That is why I supported the Levin resolution that said he must be disarmed—but not for us to go it alone, without the world with us, as the world was with us in the first gulf war.

My constituents are coming up to me and saying: What happened here? Everything feels out of control. Why? The world isn't even with us anymore. We are having fights and sniping with our allies. What happened?

I started to think about that. And I will never forget—none of us will ever forget where we were on 9/11, when we were attacked by al-Qaida. Osama bin Laden, remember his name? He attacked us. He hurt us on our own

shores. I will never forget that. And I will never forget, on 9/12, that the whole world was with us.

There is a song called ''He Has the Whole World in His Hands.'' It is a beautiful song. President Bush had the whole world in his hands on 9/12. Countries around the world—every one of them; even some that we really do not have such a close relationship with—expressed that they were with us. We had the world in our hands. Yes, we were the leader of the free world before 9/11, but on 9/12 the world was so with us and against terror. And somehow, some way, this has been squandered. This has been squandered. There has been this intensity on Iraq and what I call a designed neglect of the rest of the world.

Even in our own hemisphere, we see what is happening in Colombia, in Venezuela. I met with the Mexican Foreign Minister, I say to my friend from Nevada, who has a good-sized Hispanic population in his State. And the Mexican Foreign Minister told me: We had such high hopes when this administration took office, and we see nothing. We are getting no attention for our issues. We must work with your country. And, actually, he quit his post because there was no communication.

We then see what is happening in North Korea, amazing developments in North Korea. And we cannot seem to get the administration to focus on it at all.

Let me tell you, those of us on the west coast, yes, that is why my constituents are coming up to me in the supermarket and pulling at my sleeve, because the North Koreans have a missile that can reach America. They already have the nuclear weapon. They already have kicked out the inspectors. And what is the answer? When the President put them in the ''axis of evil,'' I asked, from my seat on the Foreign Relations Committee, the State Department: Before the President put North Korea in the ''axis of evil,'' was there a conversation about the ramifications of that? And the answer came back to me, I say to my friend: Well, we did go in and we did see the President—this is the highest levels of the State Department—and we said we agreed that North Korea deserved to be on the ''axis of evil.''

I said: That was not my question. There are a lot of people who could be termed evil in this world. My question was, did you discuss the ramifications? The answer was: No, we did not.

I asked: Well, did you call up our friends, our allies, with whom we share classified information every day—South Korea, Japan—to talk to them about the ramifications of putting North Korea in the ''axis of evil''? Oh, no, came the answer, we do not share State of the Union speeches with other countries.

Well, that was not the point about the State of the Union speech. It is South Korea that looks across the line at North Korea. I have been on that line, that DMZ. By the way, what a failure to humankind that situation is—one people divided. It is just the saddest situation, one of the saddest failures of humanity.

So we had the situation on 9/12/01, where the whole world was with us—the whole world. And after that, that whole situation has been squandered.

I heard Senator LEAHY make similar remarks today about this. I think we have to understand where we are today. And we need to understand there are problems all over this globe, and that for us to go it alone—or almost alone—in a war with Iraq will make matters worse, I am afraid. As a leader, you have to win over your friends, and others, through your reasoning, through your evidence, through your power of persuasion, not just buying people off or giving them money.

There has been a lot of talk about what we are going to give Turkey for their cooperation. Look, I understand an ally is an ally, a friend is a friend, and so on; but this thing is still not resolved, and the costs go up. I don't think the American people understand that this is their tax dollars we are talking about—$5 billion in grants, when we are about to kick off the rolls almost 600,000 children from after-school programs, according to the President's budget, and not fully funding our disabled kids in school, and the cleanup of only 40 Superfund sites instead of the 87 President Clinton did during his tenure.

These things just don't come about in a vacuum. I thought Senator BYRD was so well spoken when he made the point that we don't even know the cost. Remember Larry Lindsey, I say to my friend from Nevada, the President's economic advisor? He put out—I think last summer—a statement saying it is going to cost us between $100 billion and $200 billion for a war in Iraq.

Mr. REID. If the Senator will yield. Isn't that the man who was fired recently?

Mrs. BOXER. Fired, let go.

It is going to cost between $100 billion and $200 billion. Now they are saying it is $95 billion. They started off saying it was going to be $30 billion, $40 billion, $50 billion, or $60 billion, but that doesn't count what they want to pay to Turkey. When you add in the loan guarantees and the rest, some people are saying that is $26 billion. And we are not reimbursing our States for the work our local police, our firemen, and our emergency workers are doing. We are neglecting port security.

I read today—and this is close to my heart—a little article, which I will send to my colleagues. It is very important. It says that many terrorist groups now have stinger missiles, shoulder-fired missiles. We have seen five, six, seven examples of terrorist groups over the years aiming at commercial aircraft. Admiral Loy's Deputy has said this is worrisome. It is going to cost money to prepare our commercial fleet, to have an antimissile system put on, just as the Israelis reportedly do. The technology is there. Yes, it is going to cost a million dollars per plane, but we are busy giving money out around the world. We are busy giving money out. We don't hear the name Osama bin Laden. One of my colleagues, Senator DORGAN, calls him Osama ''been forgotten'' because you don't hear anything about him.

Mr. REID. Will the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. REID. As a foundation for my question, I want to say I appreciate her statement on the floor. Senator BYRD was here earlier. I told him the same thing I say to the Senator from California. This is a good debate to have. It doesn't matter how you feel about the war. It is important to have a debate.

As I said earlier today on the floor, and I say to the Senator from California, are you aware that the British Parliament had a long, extended debate today on the Iraq conflict?

Mrs. BOXER. My staff mentioned that they had watched it. I did not see it myself.

(Mr. ALEXANDER assumed the Chair.)

Mr. REID. The senior Senator from Illinois said he watched it for an hour before work today. He said it was a great debate. They discussed the issues relating to the conflict that will probably occur in Iraq. I say to my friend from California, it is good that you are speaking to alert the American people to some of the problems that may occur with this conflict. It is too bad that the Republicans, the majority, are holding up other legislation and other debate because of one fully employed man, Miguel Estrada, who has a job, as we all know, making hundreds of thousands of dollars a year. It has been laid out on this floor today that the Bush administration lost 2.8 million jobs. Millions are unemployed. But we are hung up on this debate because Republicans won't move off of it.

My question to the Senator is, would it not be good if we had a full day's debate set aside so Senators can offer their views about what is going on in Iraq?

Mrs. BOXER. I say to my friend, if we are to be relevant—this is the word the President talks about when referring to the U.N.—that is what we ought to be doing because, when I went home, people wanted to talk about this because they are nervous about it. Frankly, they don't want us to go it alone. At least the vast majority of people in my State feel that way. They are asking me what it is going to cost. I say I have my own guess, but we really have no idea. A man got fired because he said it would cost between $100 billion and $200 billion. Now they are saying $95 billion. And now they are offering Turkey $26 billion. One general said they will need to stay there with 200,000 troops for years. Another general said that was wrong. We cannot get an answer to that.

We don't know if Saddam Hussein will use these weapons of mass destruction, or what he will do with the oil fields if we go in there. My own view on this is that the American people are very concerned. I agree with my friend. We are spending a whole lot of time on the nomination of one judicial nominee who, frankly, in my view, cannot really want the job that much because he won't answer the questions. He will not answer the questions. If he answers the questions, we would say immediately, vote cloture, then give him a vote, and that is the end of it.

Mr. REID. Will the Senator yield for another question?

Mrs. BOXER. Of course.

Mr. REID. The Senator served in Congress, as I did, when the previous war occurred in Iraq, which was more than a decade ago. Does the Senator recall—and these numbers may not be exactly accurate, but they are close—that the first President Bush reached out and, prior to the conflict beginning, there were commitments from various countries to give billions and billions of dollars to help fight the war in Iraq—billions of dollars? And is the Senator also aware that in addition to giving billions of dollars to help with the conflict, other countries were supplying tens of thousands of troops and airplanes?

Now, I have pretty reliable sources that say the only country really supplying troops is Great Britain. All of the other countries are saying they support the war, but most of those are in the category of Turkey. They are supporting the war if, in fact, they get certain economic benefits. So, in short, is the Senator aware that in the previous conflict there were large sums of money that would be given to help the U.S. fight that war, and large numbers of troops that were being sent to the front lines to help the United States troops fight that war? Is the Senator aware that, in fact, basically other than Great Britain, this is our war and nobody is helping?

Mrs. BOXER. My friend, the Democratic whip, is absolutely correct. Our records show that the first gulf war cost $61 billion. Remember that we stopped well short of Baghdad, when you are thinking what this war will cost. That is a long time ago and there has been inflation. It was $61 billion then, and $54 billion was paid for by our friends around the world. That is more than 80 percent, when you figure it all out.

I further say to my friend that we had many countries sending troops, over 20. In this case, the administration is telling us we need 250,000 troops for this war, and Britain is sending in 26,000 troops. That is about right, 26,000 troops and 250,000. That is pretty much in terms of combat troops. That's it.

Mr. REID. Will the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. REID. The reports I received today is the United States alone has in the gulf area 210,000 troops, plus Great Britain—I do not know how many they have there, but, in fact, if they need 240,000 troops, is what I am told, the United States is doing it all with the help of Great Britain. There are other countries saying they support us. Those countries, I repeat to the Senator, and I think she will agree, want some economic benefit to even say they support us, even though they are not sending any troops.

Mrs. BOXER. It is an unprecedented handout type of situation, which is offensive to me in many ways. This is a go-it-alone situation where it stands today.

I will finish where I started this conversation about Iraq. We had everyone with us after 9/11—the whole world. We lost that. People around the world are looking at us, and many are saying this was something the President had decided and he just went to the United Nations because he was kind of pushed there—and as one of the people who pushed him there, I am glad he went there. Believe me, I give credit where credit is due. I give credit to Colin Powell. But going there and winking and nodding and saying, I am going to go to the U.N.—but really I know what I want to do—I will give a particular case in point.

Whenever there is a little progress in finding some of these weapons, the President says things such as: Oh, that is the tip of the iceberg, and he may be right. But wouldn't it be better to say something such as: This is the tip of the iceberg, Saddam Hussein, and I am asking you to give us the rest of the iceberg, to do it now to avoid war, to avoid bloodshed. The world is watching.

We do not seem to hear those words. What we really hear is: Inspections mean nothing. Maybe it means nothing, and if it means nothing, then the U.N. eventually is going to call this guy on it. They are going to call him on it, just like they did before. By the way, these weapons are a threat to the world, and a lot of the world is a lot closer to him than we are, and a lot of the world could potentially be reached by his missiles.

The question for me, as one Senator, has never been should Saddam be disarmed—absolutely he should. Back in August when the President was saying we are going to go to war, I said: Wait a minute, the issue is weapons of mass destruction; let's see if we can get intrusive inspections back in there and pick up where we left off with the inspections which destroyed—and I read the list into the RECORD already—more weapons of mass destruction than we did with our bombs. If this is really about that, then we know the proven way to do it. And if Saddam ever so much as kicks the inspectors out, does not cooperate with them, thwarts them, we will know it, and we will be on the moral high ground. We will have the whole world back in our hands, and we can move forward with the world community, just as my friend pointed out happened in 1990.

I thank the Presiding Officer.

I will be glad to yield to the Senator from Nevada for another question.

Mr. REID. I appreciate that.

Mr. President, I mentioned earlier and I ask the Senator if she is aware of a new poll that came out today conducted by a nonpartisan public interest group called the Pew Research Center. The Senator has heard of that prominent group, is that right?

Mrs. BOXER. I heard of the group. I do not know of the poll.

Mr. REID. This poll was conducted between February 12 and February 18. As the Senator knows, 1,254 participants is a big poll. Will the Senator agree with that statement?

Mrs. BOXER. Correct.

Mr. REID. Is the Senator aware that when these people were asked in this nationwide poll how George W. Bush is handling the economy, only 43 percent of the people say they like the way he is handling the economy, but 48 percent disapprove of the way he is handling the economy?

Mrs. BOXER. I say to my friend, this does not surprise me. We are seeing the worst economic record of any administration in 50 years in terms of jobs lost, in terms of mortgages defaulted, in terms of loss of stock market value. We are talking $8 trillion of loss, in terms of fear about retirement, fear about losing health care, fear about the cost of health care, fear about cost of prescription drugs, fear about being able to afford to send your kids to get an education. My friend has given me a number that makes eminent sense, and I say it is going to continue to plummet because every plan this President comes up with is giving tax breaks to the wealthiest among us in the hopes they will trickle down to the working people. It never worked before, and it is not going to work.

I am very worried, and that is why people also are very anxious in my State about the war and about the economy. It is a two-front challenge we face.

Mr. REID. If the Senator will extend her usual courteousness and allow me to ask another question.

Mrs. BOXER. Absolutely.

Mr. REID. The Senator outlined why people likely feel the way they do, but does the Senator also acknowledge the fact that we have in the last 2 years seen a $7 trillion surplus evaporate? Could that be a concern?

Mrs. BOXER. I left that out in the list of items that have gone wrong. A $7 trillion surplus disappeared, and we have deficits as far as the eye can see. The last deficit I remember under George Bush 1 was headed to $300 billion. As I remember, it was up to $290 billion. We all pulled together and said this is an outrage. We worked hard under Bill Clinton for 8 years and got that down to a surplus which was healthy for our economy, and we had the biggest economic boom in years. It

has all been squandered. World opinion has been squandered. The surplus has been squandered.

Mr. REID. If the Senator will yield, is the Senator aware that this same poll, when asked how George Bush is handling tax policy, shows that 42 percent of the people approve of the way he is handling tax policy? And is the Senator aware that for the first time in this Presidency, 44 percent of the people feel he is handling it very badly; is the Senator aware of that?

Mrs. BOXER. My friend is telling me something I was not aware of. I did not see the poll, but again, I think it becomes very clear to the people that every policy that comes down, whether it is taxation of dividends, tax breaks for the people at the top of the economic ladder, that we are, in essence, seeing a plan to get this economy revived which is going to do nothing but put money in the pockets of people whose pockets are stuffed with money. We do not need to do that.

I was in California with people who were telling me: Senator, we do not need a tax break. We are doing fine. Worry about homeland security. Worry about nuclear powerplants getting protected. Worry about the chemical plants being protected. Worry about the homeland security first responders.

I say to my friend, if, God forbid, we are attacked anywhere in our country, people are going to dial 9–1–1, they are not going to dial the President, they are not going to dial Senator REID, Senator BOXER, or Senator HATCH. They are going to dial 9–1–1. Those very people are telling us they have not received a penny, and it is a very sad situation.

Mr. REID. Will the Senator yield for another question?

Mrs. BOXER. Yes.

Mr. REID. Today I told the senior Senator from Illinois about the visit I had yesterday with people from Nevada. The woman I remember so clearly works for the Las Vegas Metropolitan Police Department. She has worked there for 27 years. For the last 20 years, she has been the person in charge of the 9–1–1 center. Is the Senator aware that she, like many people who work in these entities around the country—and, of course, in a State of 35 million people, I am sure California has a number of them—she told me that in Las Vegas, this big sprawling urban center we now have, that when someone calls 9–1–1 from a telephone, such as we see on the desk in the corner or such as we have in the cloakroom or the Senator has in her home, they know where that phone call comes from.

They know the address, they know the location, but now when people use computers for doing their telephoning in a way that is hard for me to understand, but I am beginning to understand it better, and cell phones, they have no idea where their emergency calls come from. People have died around the country as a result of a call coming into the 911 center, and they do not know where it is coming from.

Does the Senator realize that can all be cured with money? The technology is here to correct that, but we do not have money to give the State and local governments to correct that one thing to make homeland security and security generally more satisfactory. Is the Senator aware of that?

Mrs. BOXER. My friend is right. As a matter of fact, the Commerce Committee is holding a hearing to address this problem of people dialing 911 from a cell phone. We have had people who are in the midst of being a victim of a crime dialing 911 and the law enforcement did not know where it was from. It is a crucial matter that has to be resolved.

What is amazing is this administration has money to give tax breaks to people at the top. The people who earn over a million dollars a year are going to get back, oh, gosh, an average of about $80,000 a year just from the dividend tax break alone, not to mention an income tax break. They have the money for that, but they do not have the money to help our homeland defense.

They have money to give to Turkey—they are talking turkey with Turkey—that is for sure. Reports of an aid package for Turkey started off as a few billion, then it was $6, then $10, then $16. Now I hear it is $26 billion. I think it was Senator DORGAN or Senator DURBIN who said maybe our States should change their name to Turkey and they will do better than they are doing now.

My friend is right. I have to use a sense of humor because you get upset about these things and you cannot keep being outraged.

Mr. REID. Will the Senator yield?

Mrs. BOXER. I am happy to yield before I close.

Mr. REID. What the Senator said in her statement—and she seems to agree with me, and I ask if she does—the reason we are not debating on the Senate floor Senator DASCHLE's plan to improve the economy, the reason we are not debating homeland security issues, the reason we are not debating environmental issues, which I know the Senator from California is so passionate about—no one in the Senate believes more in doing things to improve the environment than the Senator from California—and there are so many things we could be talking about dealing with the environment, and the multitude of other issues the Senator has talked about today. Is the Senator aware the reason we are not doing this is that Republicans do not want us to do it, because they have no plan, that this is just an excuse for them to do nothing, being hung up on this Estrada thing? Is the Senator aware of that?

Mrs. BOXER. I am absolutely aware of this. I say to my friend, I went through the litany at the beginning of my talk about how other nominees have answered a multitude of questions, and as a matter of fact some have sent previously confidential opinions that they have written. All the other side has to do is say to Mr. Estrada, answer the questions, and then there can be a vote.

When my friend raises the environment, I will take a minute to say that we finally got a report that has been languishing in the administration since June. Surprise, surprise, it was leaked to the Wall Street Journal, and after it was leaked, then the administration released it. It has some horrific statistics about what is happening to young people and women of childbearing age in terms of ingestion of mercury through mercury-tainted fish, and the fact that mercury is now emerging as a leading cause of neurological damage and I predict will become an issue in this Senate just the way lead was an issue in other Senates. We finally got this report. We begged for it and then got it.

My friend is right: What could be more important than getting this economy going than protecting the health of our children by bringing that report up for debate and open for discussion? Senator JEFFORDS has a great plan, the Clean Power Act, that will take that mercury out of the air, that will save these children from getting neurological damage. Let's debate it. Let's debate Senator DASCHLE's plan, his economic stimulus plan, that gives the stimulus to the working people, versus the Bush plan that gives it to the people who do not even have to work because they live off their dividends. I would like to see that debate.

If Miguel Estrada really wants this job, he will do what Margaret Morrow did, he will do what Judge Paez did, he will do what Marsha Berzon did, and answer the questions. There were 4 years of questions to Judge Paez. He answered them all. We had to break their filibuster, I say to my friend, and we did.

Senator Smith at the time was proud to launch the filibuster. Senator Bob Smith said—and I read it into the RECORD—this is a filibuster launched because we need to get questions answered, and it is the right thing to do.

Mr. REID. Would the Senator yield for a question?

Mrs. BOXER. Yes.

Mr. REID. I want the Senator to know that in addition to answering questions—because Judges Paez and Berzon had a judicial record that could be reviewed.

Mrs. BOXER. Correct.

Mr. REID. He has none. In addition to answering the questions, we asked that he submit the memos he wrote when he was at the Solicitor's Office. The Senator will agree with that?

Mrs. BOXER. I did. I said it. I said there was precedent, and I read off the five cases where previously confidential memos were released. I named the gentlemen—they happened to be all men—who were willing to release it in order to get a vote on their confirmation.

So there is adequate precedent for that. There is adequate precedent for

answering the questions, and if the Senate has any respect for our work and for the Constitution of the United States, which we have been sworn to uphold, then we will not roll over when any President, this one or any future President, sends a nominee down who cannot even tell if there is one Supreme Court case, in all the hundreds of years, that he disagrees with, cannot even name what jurist he would most emulate. It is beyond the pale, the questions Mr. Estrada refused to answer, because clearly he has been told and trained not to answer any questions.

I was proud to come to this Chamber, after my diligent staff went back through the RECORD and got the quotes of Bob Smith who helped lead the filibuster, who got the quotes of Senator SESSIONS who then said we should have, after we broke the filibuster, yet another vote to indefinitely delay a vote.

It is extraordinary what has happened. In the RECORD tonight, for all who will read, we have the quotes of Senator HATCH, who called what happened to Paez a filibuster, who called what Senator SESSIONS tried to do unprecedented. We have the quotes of Senator Smith who said: All I am doing is asking questions to get answers, and now let the people decide.

They are going to run some kind of ads in my State saying: BARBARA BOXER, shame; she does not like Hispanic nominees.

Do you want to know something? To say that is like saying I do not support women's rights and there is going to be a backlash on that. I am the person who recommended the first Mexican-American to sit on a district court in Los Angeles, the person who stood on her feet day after day trying to get Richard Paez his seat.

They can do all they want because I think the American people understand we are standing on a principle. If I were the only one on my feet, I would stay on my feet because I think it is wrong to stonewall the Senate and members of the Judiciary Committee who in good will have approved, by the way, an enormous number of judges—and who were just simply saying: Answer the questions; give us the memos; we do not know who you are; we want to have a record; we want to make an informed decision. This is the right thing to do.

I dare say to my constituents—and I did when I was home; I said: You may be hearing about this, but I want you to know that you sent me here not to be part of the wallpaper behind me—that is pretty easy—not to go along to get along, but to stand up and do my job as a Senator, and that is not to vote on a judicial nominee who has refused to hand over documents, who has refused to answer questions, who has absolutely no record on which to judge what he is going to do. Once we have that information, I am happy to have a vote and let the chips fall where they may.

IRAQ

On Iraq, I make a rhetorical plea to the administration: You had the whole world in your hand on 9/12; you don't have it in your hand now. Let's get back to being a true leader. Lay out a path for peace. That is an American value, to lay out a path for peace. Lay out a path for peace, not just the path for war.

Get this man disarmed, Saddam Hussein, in a way that does not lead to the loss of life and blood of our people and innocent people. And if we do that, we will be back to where we were on 9/12. If we pay attention to other problems in the world, we will be back to where we were on 9/12.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. We were elected to take an oath of office to uphold the Constitution, defend the Constitution from enemies, foreign and domestic. That is the oath each member takes very seriously. It is an oath that puts on each of our shoulders the responsibility to decide what that means.

Our distinguished Senator from West Virginia, ROBERT BYRD, presented me with a Constitution when I arrived here. I have learned a great deal about this document, about what it says and means. I have learned about the intentions of the Founders of the country. This document is the gospel which each member is required to follow. It says the President, by and with the advice and consent of the Senate—it does not say that the Senate shall approve or how the Senate shall consider. It says the Senate will be an equal partner with the President. The President will make a nomination, and it is for the Senate to decide, 100 Senators to decide, according to their own values and according to their own background experience and according to whatever they want to bring to bear on that matter how they will decide.

I have listened to a lot of these debates in the last couple of weeks on this matter. I am not a lawyer. I am not on the Judiciary Committee. I take very seriously my responsibility to weigh someone's career, weigh someone's character, to try to assess whether this is the kind of person I want to support to put on a court where he will be presiding, if he chooses, for the rest of his life; where he will be making decisions that will affect millions of people, whether someone has the right to housing or whether someone has the right to be protected from discrimination, whether some schoolchildren can go to school under better conditions. I don't know what kind of decisions this man will face, but I know they will be important. I know they will last for a long time and last beyond his own lifetime.

In effect, we are making a decision about someone who will be impacting the lives of Americans for two or three generations. That is the only time this person will be evaluated by his fellow citizens before that decision is made, unlike all of us who face our electorate every 6 years, or the House Members every 2 years, and the President himself every 4 years. This man will be appointed to the bench for life. I believe I am within my rights as one of the 100 who will make that decision to have sufficient information that I can make an informed judgment.

It is not for me to say to the administration the criteria they should use in making this kind of appointment. But I would be surprised, frankly, that out of all the vast numbers of highly qualified people in the country there would be someone chosen for the second highest court in the country without any previous judicial experience. If that is the case, I believe we have a special need to have information provided, to give each of us the information we seek and need to make that determination. That is not forthcoming, either.

We are told we can have certain information and we cannot have other information. I received a note from the White House counselor saying Mr. Estrada would meet with me, and I appreciate the gesture. I don't want to go back into my office off the record and have a conversation. I want to know on the record. This man does not have a judicial record. We have to find other means of obtaining that information. I am wondering why it is that somebody with no judicial record, no series of decisions that we can look to, writings we can look to for guidance as to his views, why he would not feel, and why the nominator would not feel a special obligation to provide that information.

If I went before the voters of Minnesota and refused to answer some of the questions Mr. Estrada refused to answer before the Judiciary Committee, I would be laughed out of the election. Certainly no one should vote for me if I would not give voters any information to allow them to understand my philosophy, what I value or not, what decisions I agreed with or disagreed with in the past, just basic information which we do not have about this man because he has no judicial record because he has never been a judge.

We have elected people in Minnesota who have not had prior experience, and it is fashionable to say they are not a career politician. In fact, we have a Governor who just departed who had that view, that was the right kind of qualification.

If I got on an airplane and the pilot said this is going to be a different kind of flight; I have never flown a commercial airline before, I would not feel more confident. I would be pretty worried. If somebody says they are taking their child in for surgery, and someone said that doctor had never performed that kind of surgery before, I would be very concerned. I would want to know some information about that individual. I would want to know that person's qualifications. I would want to

know if that person had the training and skills to approach that matter before I trusted my life or the life of one of my children with that person. And we are entrusting the lives of unknown, not-yet-identified, very real people, very real Americans who will have to go before that court, where that court will review decisions that are made that are their last course. If justice is not served, justice will be forever denied them and that will be a tragic injustice they will suffer for the rest of their lives.

We cannot foresee all of that. We cannot prevent all of it. We have a responsibility to the Constitution of the United States which we swore to uphold and defend, which our Founders thought so important that they did not even talk about the country; they talked about the Constitution. That was our responsibility. Senator BYRD says that our responsibility is to uphold the Constitution. That is our responsibility. That is the responsibility of each of us.

I might want something different in terms of information or background than other of my colleagues. For some of my colleagues, the fact that the President made this nomination, he is of their political party, that is all the information they need, well, that is the absolute right of all of my colleagues who decide that way.

I don't question someone else's right to make their decision however they determine based on that, the same way I don't want anyone to question my right to have the information that I probably need, just basic information so I can know the background, qualifications, judicial philosophy, and views of this person. I don't believe any electorate in any State in this country would elect somebody who wanted to serve in a high office—Governor, Senate, member of the House—who had no prior political record, no prior involvement in public life, and went before the electorate and said: I want to be elected and I am not going to tell you where I stand or what I believe or what I do or what I agreed with in the past or who I like or do not like. I don't think anywhere in America there would be positive reaction to that.

I don't believe there would be a board of directors in corporate America that would hire somebody for an important position—chief executive officer, chief operating officer, the No. 2 position—that would even consider someone who would not provide the basic information that we are asking for here.

To me this gets into the realm of just being ludicrous, that we are in a position of being questioned for taking the particular position that says we want information.

I agree with my colleague from California. If we get the information, then there will be a vote. If we get information so those of us who have these reservations—and really, in my case, I have not come to a final decision because I do not have the information with which to do so. But I am not going to make that decision, I am not going to agree to this matter coming before this body, if I can help it, until I have that information. That is just the way it is. That is the position I have taken. Again, that is my right to do so and that is the right of any one of my colleagues in this situation.

We are spending an awful lot of time here, way too much time, on this matter, given what is going on in the country today. We ought to be setting this nomination aside, giving the nominee the opportunity to present in writing the information we have requested. Either do so or not. We can assess it accordingly. We ought to turn the attention of this body to matters that, when I was in Minnesota last week, certainly concerned every one of the citizens I talked and listened to. It was not the nomination of Miguel Estrada, important as that is. It is about the war in Iraq that is looming. It is people's fears of whether we were going in; what is the right thing to do. The fact that the week before they were told to go out and buy plastic and duct tape, go out and buy bottled water and food. They are not very reassured in Minnesota about the ability of their Government to protect them. They are not really sure.

I must say, based on information I have received, what I have heard expressed from local law enforcement officials in Minnesota, that what we passed in Congress has not gotten out to these first responders—resources, training, information.

I had the sheriff of the largest county in Minnesota, Hennepin County, in my office today. He cannot get information about what happened with the raising of the national security alert. He said he found out about it on CNN. He is a sheriff. He is part of the network of emergency responders for the city of Minneapolis, the largest city, largest county. He does not have any source of information from the Federal Government to tell him even that such a code has been established, much less what the reasons are, much less what some of the circumstances might be.

He said he tried to find out from the FBI, with which he has a very good working relationship, what the circumstances were. They didn't know either. They hadn't gotten any prior word. That certainly astonished me.

On the Governmental Affairs Committee and I sat through the hearings where this was being discussed. It was my clear understanding that the new Department of Homeland Security was going to be in constant communication with the FBI and CIA, that information was going to be shared, and they would all have that information. I also understood, because we certainly provided the funding and we certainly made it clear in the hearings on the floor that we intended for that Department to be communicating, providing resources, providing training, providing expertise and getting that out to the Hennepin counties of Minnesota—and America.

Lo and behold, he doesn't know. The FBI district office in Minneapolis, MN, doesn't know. So he is watching CNN. He was not very confident about how well this administration has done its job to get this country prepared for what may lie ahead.

The citizens of Minnesota, as I said, are certainly alarmed. I believe they have an absolute right to expect that this body, this institution of the Senate would be turning its attention to these matters of concern.

So I say again, respectfully, to the majority leader, the time has come to set this nomination aside to give Mr. Estrada the opportunity to respond in writing to the questions which I and others have said clearly, again and again, we must have answered to make an informed judgment, which is my constitutional obligation to the country and to the Minnesota people who elected me. I don't think that is much to ask at all. Anyway, it is what I am going to ask and require before I am going to proceed.

Then I ask the majority leader, as I wrote 2 weeks ago in a letter, that I and the rest of us turn our attention on this Senate floor to these matters of war and peace, whether the United States of America is going to commit itself to an invasion of another country, a preemptive strike, something that is going to have profound consequences for our country—for our world for years to come.

Our silence here, as again the distinguished senior Senator from West Virginia, Mr. BYRD, said the other day, is just profoundly deafening, the silence here in the Senate, the absence of debate, the absence of 100 different views on what we are doing, what we propose to do, what might we do.

Of course the real tragedy, in my view, and the real embarrassment to this institution, great as it is, and to the House of Representatives, is that this document, the Constitution of the United States, states very clearly and definitively that Congress and only Congress shall declare war. Not the President. No one else. Just Congress.

This was very clearly the intention of those who drafted the Constitution, whose wisdom and foresight is something I find unbelievable, that a group of people back over 200 years ago could have, on their first attempt—not that they didn't have drafts, but that they could put together a document that would be as brilliantly foresighted as this turned out to be, and anticipatory of just these kinds of matters: Where the temptation is to let it go somewhere else; where the pressures are from some person or groups of people to forget something or overlook something or circumvent something. They made the President of the United States the Commander in Chief of all the Armed Forces—back then of the militia. For that very reason they didn't want him, they didn't want any

one person—it is not just this President; it is any President—they didn't want that one person making the decision to commit this Nation to war or keep us in peace. Boy, were they ever right. Did they ever understand why that should be a decision made by an elected group such as the Congress.

We didn't declare war back in October. The President was not at that point himself—and I gather not even today is it appropriate—ready to make that final, fateful decision. That was 4 months ago, before we even got to this point. We didn't declare war. What we said is we will give the President the authority to do whatever he determines needs to be done, including the use of force. That is one of those euphemisms we use to hide our true intent, which means if he wants to have a war, he starts one. We will preapprove it and he can proceed. That is not anywhere near what the Constitution says, nor what was intended it say, nor how it was intended to be followed.

Before this Nation is committed to a war, before American men and women are sent across our border to fight and some of them to die, before possibly people in this country might suffer those grotesque experiences, they have the right that their elected officials will give this matter their most serious consideration for a length of time that is appropriate. It will not take as long as has the squabble over Mr. Estrada, but it ought to take a while, because this decision is profound.

The fact that we are here on the Senate floor now, the third day we are back from our recess—the fact we had a recess at all last week rather than being here debating these issues of war and peace—the fact that we are doing something now that, as I said earlier, has its own significance, has its own place, but pales in comparison with war and peace and the enormity of those decisions about the preparation of the country and the Department of Homeland Security, the preparedness of this Government to protect all of its citizens—those are the matters that concern the people of Minnesota almost to the exclusion of anything else; even to the exclusion of the problems with the economy with all those difficulties. Those are the matters which we should be reviewing on the Senate floor.

If the President believes we should commit our forces to invade another country, to launch a preemptive attack, to start a war against another country—which is almost unprecedented in our Nation's history, and is certainly unprecedented in the context of leaping forward to cut off a threat which is not imminent, not immediate, but rather one which we believe would materialize, and probably would if certain lines were crossed, to remove the Government, the leader of another country—these are decisions which are so enormous in their scope immediately and which are going to have such consequence for this world for decades to follow that it is wrong for us to turn the other way, for us to refuse to fulfill our constitutional responsibility. What we should do is bring these matters to the Senate floor and say, Mr. President, that was the 107th Congress, this is the 108th Congress, we are a different body, we want to recertify that constitutional responsibility that Congress and only Congress shall declare war.

No President is authorized by the Constitution to commit any forces in such a way until that decision has been made and voted on by the Congress. That is what we ought to be doing here. The American people have a right. They elected us, and they sent us here, and they expect no less of us and will hold us in the highest reproach if we fail to fulfill that responsibility, if we fail to even bring the matter up, or if we fail to direct our attention and declare ourselves one after another on the record for or against. We owe that to the people who founded this country, who sustained this document—many at the cost of their own lives. We owe that to the courageous Americans—men and women—who are amassed on the borders halfway around the world who will have to carry out that decision, if it is made, to proceed to fight. Some will be wounded and maimed. Some will lose their lives because of that decision.

We owe them nothing less than to fulfill our responsibility here in the Senate at this time or as soon as the President determines that matter should be brought to our attention.

Two weeks ago, think of what we went through. Our citizens were told to go out and buy duct tape and plastic sheets and not even told really what to do with them. In Minnesota, we are well aware of that. We are a cold-weather State. We have quite a bit of experience putting up plastic sheeting and filling up drafts around doors and windows. It is not something you can do lightly. You can increase the concentration of radon in the rooms by closing them up too tightly. The information wasn't even in necessarily the best interests and the best health of people who would be doing it. They are entitled to a lot more from their Government than that. They are entitled to know a lot more than to go out and get bottled water or canned food and duct tape and plastic sheets, and, good luck and God help us. They deserve a lot more than that. That is why on the floor of the Senate we should be bringing up homeland security and discussing what more needs to be done and the resources that are needed.

I want to bring forth the voice of the sheriff of Hennepin County, MN, and his concerns. I want to know why he wasn't told the country was going through the second highest security level and why he had to find out about it from television rather than from the Department of Homeland Security which was established by this body to provide that kind of information—supposedly provide that kind of coordination, services, and resources. God forbid that something would happen to Hennepin County and they wouldn't have the benefit of that information; they would not know what to expect, what it might be, where it would be coming from.

These are critical life-and-death responsibilities that I know the Federal Government and Secretary Ridge take very seriously. I have nothing but the highest respect and regard for him and the monumental task he is undertaking. I hold nothing but the highest respect for the sheriff of Hennepin County. The two of them ought to be working and coordinating. The sheriff ought to have the resources we provided last August in this body. It was vetoed by the President. There is more forthcoming from the 2003 appropriations. We want to make sure that those resources are getting out to local government first responders all over the United States of America so that they have that ability to train, to prepare, and to be equipped to respond as much as possible.

Again, we hope and pray it will never happen. But if it should happen, they will have to be brought into action. Every second is going to count. Every person is going to have to make the right decision. Life depends on how well we help them be prepared.

I commend the majority leader's request that this nomination of Mr. Estrada be set aside and that he be given the time and the opportunity to respond in writing to the questions of those of us who do not have the information that we believe we need to make the decision—that he provide that information to us; that we take a period of time then to focus on what is a life-and-death and most urgent concern of every citizen in Minnesota whom I met with and heard from last week. Even if there was another topic of conversation, they wanted to know about Iraq. They wanted to express their own views and own concerns. They see us on C-SPAN doing nothing but talking about the nomination, and the same the next night and the next night.

I shudder to think what they must think about our sensibilities and our priorities. It is wrong. We owe it to those citizens to do our best in everything we stand for to bring this body back to focusing on the most critical time of our Nation—the pending war, the decision there, the responsibility of the Congress to declare war. And only Congress can declare war. Those of us who voted for resolution last fall abdicated to the President. It doesn't absolve our responsibility and what we must do now to stand up and take that responsibility back and make that decision and be held accountable by the people of America.

I yield the floor.

The PRESIDING OFFICER (Mr. TALENT). The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, I am a new Senator. I am aware of the

traditions of the Senate, one of which is that a new Senator is not expected to say much—at least throughout the year is not expected to say much—to begin with until they have something of importance to say. So I have not said much.

I had been planning to make my first remarks on this floor next Tuesday on the issues I care most about, which are the education of our children and putting the teaching of American history and civics back in its rightful place in our schools so that our children can grow up knowing what it means to be an American. I planned on doing that next Tuesday. But I have decided to make some remarks today—earlier than expected because I am disappointed in what I have heard in the debate about Miguel Estrada.

Like my friend from Missouri, I have had the opportunity to preside in the last few days. That is one of the honors that are accorded new Members of the Senate. I have been listening very carefully. My disappointment has increased with each of these 10 days as the debate has continued.

I am disappointed first because I believe our friends on the other side of the aisle are being unfair to Miguel Estrada. I am most disappointed in them because I believe if the direction of this debate continues as it is going—and I heard the comments of my friend from Missouri yesterday on this same matter—if we continue in the same direction, we run the risk of permanently damaging the process by which we select Federal judges and by which we dispense justice in the United States. I am disappointed because this is not what I expected when I came to the Senate.

I may be new to the Senate, but I know something about judges. I am a lawyer. I once clerked for a U.S. Attorney General. His name was Robert Kennedy. I once clerked for a great Federal appellate judge. His name was John Minor Wisdom of New Orleans. I once worked in this body 36 years ago for Senator Howard Baker, a great lawyer. I watched this body as it considered and confirmed men and women to the Federal courts of this land. As Governor of Tennessee for 8 years, I had the responsibility of appointing—and did appoint—nearly 50 men and women to judgeships all the way from chancellorships to the supreme court.

I know pretty well the process we have followed in the Senate and in this country for the last couple of centuries.

It is fairly simple. It can be expressed in plain English. The Executive nominates, the Senate considers, and then confirms or rejects the nomination; and in doing so, what the Senators have always looked for, mainly, has been good character, good intelligence, good temperament, a good understanding of the law and the duties of a judge, and whether a nominee seems to have courtesy for those who may come before him or her. And it has always been assumed that it is unnecessary—and, in fact, it is unethical by the standards of most of the judicial canons in this country—for the nominee to try to say how he or she would decide a case that might come before him or her.

Then, after all that examination is done in the Senate, there is a vote. And under our constitutional traditions, the majority decides.

I have been listening very carefully, and that is not what is happening. The other side has simply decided that it will not allow the Senate to vote on the nomination of Miguel Estrada. In doing so, it is doing something that has never been done for a circuit court of appeals judge in our Nation's history.

In those hours that I have presided over this body in the last few days, I have been listening very carefully to see what reasons our friends on the other side could give for coming to such an extraordinary conclusion about whom I have come to learn is an extraordinary individual, Miguel Estrada.

I have been listening carefully for the answers, especially to these three questions: No. 1, what is wrong with Miguel Estrada? What is wrong with him? No. 2, why can't we vote on Miguel Estrada, after 10 days of debate? And, No. 3—most importantly—why should we change the constitutional tradition that a majority of the Senate will decide whether to confirm Miguel Estrada? Because what they are saying, really, is that he will need to get 60 votes—60 votes—instead of 51.

I have had the privilege of listening to each of their arguments. As my friend from Missouri knows, they first try one argument, and it does not go so well. Then they move to another argument, and it does not stand the light of day. And then they move to another one.

But let me tell you what I have heard as I have listened to the debate.

First, they said—it would be hard to imagine that anyone could say this with a straight face, but we had many straight faces on the other side of the aisle saying this—that he was not qualified to be a Federal appellate judge.

You do not hear that argument very much anymore because that is almost a laughable comment if it were not such a serious matter.

But let's go over this. This man isn't just qualified; if this were sports, he would be on the Olympic team, and he would be getting an award for ''American Dream Story of the Year.''

Here is a man who came to this country at age 17 from Honduras. He had a speech impediment. He spoke very little English. And within a short period of time, he was attending Columbia University, one of the most prestigious universities in America.

Then he went to Harvard Law School. Now, it is really hard to get into Harvard Law School. It has great competition. Everyone who is applying to a law school around the United States of America this year—and I know a great many of them—think about it. This young man, in a few years, was admitted to Harvard Law School. And not only that, he became an editor of the Harvard Law Review and graduated magna cum laude.

This a dream resume, but it is not even over.

Then he went to the Second Circuit as a law clerk. Then he became a clerk for a Supreme Court Justice. By now he was in the top 1 percent of 1 percent of all law school students in the country, with the kind of resume for a lawyer every law firm in the country would want to hire. He has a record that almost everyone would admire.

Then he went to the Southern District of New York, one of the most competitive places, to be hired for training there.

Then he was in the Solicitor General's Office. To those who are not lawyers or who do not keep up with this sort of thing, just being in the Solicitor General's Office might not sound like such a big deal, but those are the plum positions. The way I understand that office, there are a couple of political appointees there—the Solicitor General and his Deputy—and there are about 20 career lawyers. Miguel Estrada was one of those lawyers. They are there because they are not just good, they are the best in America. They have the best resumes. They have been the clerks to the Supreme Court Justices. They are going to be the greatest lawyers. It is the most competitive position in which you can be.

And there he is, Miguel Estrada, coming here at age 17, barely speaking English, making his way into there. He worked there for the Clinton administration and the Bush administration.

Then he went to one of the major law firms of America. And he has argued 15 cases before the Supreme Court of the United States.

That is an incredibly talented record. There is almost no one who has been nominated for any judgeship in our country's history who has a superior record. For anyone to have even suggested for 15 minutes that Miguel Estrada is not superbly qualified to be a member of the United States Court of Appeals—for anyone to even suggest that—it is difficult to see how one could do that with a straight face.

Little has been made about what he did in the Solicitor General's Office. I think it is worth talking about that. These talented young men and women have the job of helping the Solicitor General make decisions about what to do in cases in which the United States is a party. That means they review all the decisions that come against us, the United States of America. They are the lawyers for us, the United States of America.

They write memoranda and they write opinion and they must argue back and forth. And they must argue about every side of every issue. And

our friends on the other side have come up with straight-face argument No. 2, which is that somehow Mr. Estrada, who does not even have all those memoranda, should be penalized because the U.S. Government does not want to hand those memoranda, that were exchanged back and forth between the various Solicitor General's assistants, over to the Senate.

We have never done that. There are seven living former Solicitors General of the United States, and seven—all of them—have written a letter to this body saying that has never been done, and it never should be done, for obvious reasons. If it were done, you would never have any straightforward memoranda left in that office. It protects us, the United States. And that never should even be considered to be held against Mr. Estrada.

So is he qualified? It is hard to imagine someone who is better qualified. I consider it a great privilege to come to the Senate and find a President who discovered such an extraordinary person to nominate for the Court of Appeals for the District of Columbia Circuit. Such a story should give inspiration to men and women all over America, that this is the country to which you can come, regardless of race or background or whatever your condition, and dream of being admitted to the best universities, finding the best jobs in a short period of time, and being nominated by the President of the United States for such a court.

What a wonderful story. And what an embarrassing event it is to have our friends on the other side to even take the time of this Senate trying to suggest such a person is not qualified. So let's just throw that argument away and put it in the drawer.

Since that argument did not fly, they then moved to argument No. 2, which is equally difficult to offer with a straight face, if I may respectfully say so. They said he has no judicial experience.

Now, this argument is still being made. I heard the distinguished Senator from New York, last night, in an impassioned address, right over on the other side, say he has never been a judge, and we don't know what his opinions are. Never been a judge—Miguel Estrada cannot be a judge because he has never been a judge.

Well, I am awfully glad that was not the standard that was applied to Justice Felix Frankfurter when President Roosevelt nominated him. He would never have been a judge before he was a Justice of the Supreme Court.

I am glad it was not the standard that was applied to Louis Brandeis before he was nominated to the Supreme Court. I am glad it was not the standard that was applied to Thurgood Marshall, the first African American who was ever appointed to the Supreme Court of the United States. He had never been a judge. And so should Thurgood Marshall have never been a Justice because he had never been a judge?

When I graduated from New York University Law School, the dean came to see me and said I had a chance to be a messenger down in New Orleans for a man that my dean, Bob McKay, said was one of the three or four best Federal judges in the country. His name was John Minor Wisdom, a great man and a great lawyer. He had never been a judge before President Eisenhower appointed him. Neither had Albert Tuttle from Atlanta or John Brown from Texas. The three of them became three of the greatest judges in the South. They presided, having been appointed by a Republican President, over the desegregation of the southern U.S. They were among the greatest judges we have ever had, and they had never been judges.

Of 108 Supreme Court Justices who have been appointed, 43 of those have never been a judge. I have a list somewhere here of judge after judge after judge. Earl Warren; Byron White; Justice Powell; Justice Rehnquist; Justice Breyer; Judge Wisdom's favorite friend on the second circuit, Henry Friendly of New York. He had never been a judge before. Charles Clark; Jerome Frank; John Paul Stevens; Warren Burger; Harold Leventhal; Spottswood Robinson; Ruth Bader Ginsberg, who had never been a judge before she was a Justice. Does that mean she wasn't qualified to sit on this Court?

Why would the other side be taking up the time of the Senate at a time when we are concerned with war with Iraq and the economy is hurting, by making that kind of argument? They would be asked to sit down in any respectable law school in America if they gave that answer. Yet they are here in the Senate trying to persuade us that it makes a point.

In 1980, I appointed George Brown of Memphis as the first African American justice in the history of the State of Tennessee. If George Brown had to be a judge before he had become a justice, I could never have appointed an African American justice, because there were no African American judges at that time. Even today, given the paucity of Hispanics and African Americans and women who are judges, if we were to say that in order for someone to be a judge, before he or she becomes a judge, we would have a terrible, invidious discrimination against men and women who should not be discriminated against, and I am sure my friends on the other side don't want to see that happen.

So even though we have spent days arguing that Miguel Estrada should not be considered because he has never been a judge, that argument has no merit to it whatsoever. We hear it less and less now that it is on the tenth day.

Well, those two arguments didn't fly because here is a superbly qualified person. So they said he didn't answer the questions.

I just had the privilege of hearing the distinguished Senator from California and the distinguished Senator from Minnesota spend a long time talking about that, saying he hasn't answered questions. Well, Mr. President, I am not a member of the Judiciary Committee, but I know they had hearings and I know Members on the other side were in charge of the Senate when they had the hearings. I know the hearings could have gone on as long as they wanted them to because they were in charge. If I am not mistaken, the distinguished Senator from Utah was here. I believe they went on all day long. The hearings were unusually long. Miguel Estrada was there and he answered their questions. Every Senator on the committee had the opportunity to ask followup questions in writing, and two did. The Senator from Massachusetts and the Senator from Illinois did that. Mr. Estrada gave those answers in writing. He has now said to Members of the Senate that he is available for further questions. He will be glad to visit with them.

What does he have to do to answer the questions? Why is there a new standard for Miguel Estrada? Why do we say to him, for the first time, tell us your views in a particular case before we will confirm you? We have tradition rooted in history that it is even unethical to do that. I appointed 50 judges, as I said, when I was Governor. When I sat down with these judges, I didn't ask: How would you rule on TVA and the rate case, or how would you rule on partial-birth abortion, in the abortion case; or what would you do about applying the first amendment to the issue of whether to take the Ten Commandments down from the courthouse in Murfreesboro, TN, or how do you feel about prayer in the schools, or if somebody says a prayer before a football game?

I didn't do that because I didn't think it was right to ask a judge to decide a case before the case came before him, which has been the tradition in this country. We are not appointing legislators to the bench, or precinct chairmen, or think-tank chairmen, or Senators; we are appointing judges. They are supposed to look at the facts and consider the law and come to a conclusion. But they say he didn't answer the questions.

Mr. President, the only way I know to deal with that—because this side says one thing and that side says the other, and since I am not on the Judiciary Committee—is to read the questions and the answers. I wanted to see whether he was asked some questions and whether he gave some answers.

These are the questions and answers, Mr. President. This is the record of the hearing of Miguel Estrada, plus a long memorandum of questions from the Senator from Massachusetts and the Senator from Illinois that he also answered. I will not take the Senate's time to read all of the questions and answers, but since they keep saying he didn't answer the questions, let me give some examples.

The chairman of the committee says:

Mr. Estrada, we have heard you have held many strongly-held beliefs. You are a zealous advocate. That is great. You know, lawyers who win cases are not the ones who say ''on the one hand, this, on the other hand, that.'' They are zealous. But you also have to make sure, if you are going to enforce the laws, that your personal views don't take over the law. Senator Thurmond has asked every single nominee I have ever heard him speak to—Republican or Democrat—to speak to that effect. What would you say is the most important attribute of a judge, and do you possess that?

A very good question.

Answer:

The most important quality for a judge, in my view, Senator LEAHY, is to have an appropriate process for decisionmaking. That entails having an open mind, it entails listening to the parties, reading their briefs, going back behind the briefs and doing the legal work needed to ascertain who is right in his or her claims. In courts of appeals court where judges sit in panels of three, it is important to engage in deliberations and give ears to the views of colleagues who may have come to different conclusions. In sum, to be committed to judging as a process that is intended to give us the right answer and not a result. I can give you my level best solemn assurance that I firmly think I have those qualities, or else I would not have accepted the nomination.

''Does that include the temperament of the judge?'', asked the chairman.

Mr. Estrada said:

Yes, that includes the temperament of a judge. To borrow somewhat from the American Bar Association, the temperament of a judge includes whether he or she is impartial and openminded, unbiased, courteous, yet firm, and whether he will give ear to people who have come into his courtroom and who don't come in with a claim about which the judge may at first be skeptical.

The chairman said:

Thank you.

I submit that is a good answer. I appointed 50 judges and I would have listened to that question. I would give him an A-plus on that.

Here is the Senator from Iowa:

Before I make some comment, I want to ask three basic questions.

This is in the hearing with Mr. Estrada. This is the man who the other side says doesn't answer questions.

The Senator from Iowa:

In general, Supreme Court precedents are binding on all lower Federal courts, and circuit court precedents are binding on district courts within a particular circuit. Are you committed to following the precedents of the higher courts faithfully, giving them full force and effect even if you disagree with such precedents?

Mr. Estrada:

Absolutely, Senator.

How could you make a better answer than that? You could either say yes or no. He said yes.

The Senator from Iowa:

What would you do if you believed the Supreme Court or court of appeals had seriously erred in rendering a decision? Would you, nevertheless, apply that decision, or would you use your own judgment on the merits, or the best judgment of the merits?

Mr. Estrada:

My duty as a judge, and inclination as a person and as a lawyer of integrity would be to follow the orders of the highest court.

The Senator from Ohio:

And if there were no controlling precedent dispositively concluding an issue with which you were presented in your circuit, to which sources would you turn for persuasive authority?

Mr. Estrada:

When facing a problem for which there is not a decisive answer from a higher court, my cardinal rule would be to seize aid from any place I could get it. Depending on the nature of the problem, that would include related case law and other areas higher courts had dealt with that had some insights to teach with respect to the problem at hand. It could include history of the enactment, in the case of a statute, legislative history. It could include the custom and practice under any predecessor statute or document. It could include the view of academics to the extent they purport to analyze what the law is instead of prescribing what it ought to be, and, in sum, as Chief Justice Marshall once said, to attempt not to overlook anything from which aid might be derived.

I give him an A plus for that. That was a good question, and he gave a superb answer, just the kind of answer I think an American citizen who wants to appear before an impartial court in this country would hope to hear. I do not think we want to hear: Welcome to the court, Mr./Ms. Litigant. We have here your Democratic court; we have here your Republican court. If your views are all right, you might get the right hearing. You would want a judge who said what Mr. Estrada said.

The Senator from Massachusetts, who has been extremely critical of Mr. Estrada, asked a more detailed question. Mr. President, you may be wondering why I am going into such detail when this is available to the whole world, including the Senators on the other side. The problem is perhaps someone has not bothered to offer this book to our friends on the other side because they keep coming down here while you and I are presiding day in and day out for 10 straight days and saying Mr. Estrada has not answered the questions. My suggestion is he has answered question after question, and he has done a beautiful job of answering the questions.

Let me take a few more minutes and give examples of answering questions.

The Senator from Massachusetts:

Now, Mr. Estrada, you made the case before the court that the NAACP should not be granted standing to represent the members. As I look through the case, I have difficulty in understanding why you would believe the NAACP would not have standing in this kind of case when it has been so extraordinary in terms of fighting for those—this is the NAACP—and in this case was making the case of intervention because of their concern about the youth in terms of employment, battling drugs, and also voting.

In other words, Mr. KENNEDY was saying: Mr. Estrada, how can you do this when the NAACP is on the other side?

Mr. Estrada's answer:

The laws that were at issue in that case, Senator Kennedy, and in an earlier case, which is how I got involved in the issue, deal with the subject of street gangs that engage in or may engage in some criminal activity. I got involved in the issue as a result of being asked by the city of Chicago——

The last time I checked, the mayor of the city of Chicago was a Democrat, a good mayor, but just so I would not want anyone to think this was a partisan comment——

which had passed by similar ordinance dealing with street gangs. And I was called by somebody who worked for Mayor Daley when they needed help in the Supreme Court in a case that was pending on the loitering issue. I mention that because after doing my work in that case, I got called by the attorney for the city of Annapolis, which is the case to which you are making reference. They had a somewhat similar law to the one that had been at issue in the Supreme Court. Not the same law. They were already in litigation, as you mentioned, with the NAACP. By the time he called me—

This is the lawyer for the city—

he had filed a motion for summary judgment making the argument that you outlined. And he had been met with the entrance into the case by a prominent DC law firm on the other side. He went to the State and local legal center and asked: Who can I turn to to help? And they sent him to me because of the work I had done in the Chicago case. Following that, I did the brief, and the point on the standing issue that you mentioned is that in both Chicago and in the Annapolis ordinance, you were dealing with types of laws that had been passed with significant substantial support from the minority communities. I have always thought that it was part of my duty as a lawyer to make sure that when people go to their elected representatives and ask for those type of laws to be passed to make the appropriate arguments that a court might accept to uphold the judgment of the democratic people. In the context of the NAACP, that was relevant to a legal issue because one of the requirements we argued for representational standing—

Those who might be listening may think this is awfully detailed, awfully specific, awfully long. Mr. President, that is my point. Senator KENNEDY asked an appropriate and very detailed question about an issue involving street gangs in Chicago where Mayor Daley asked Mr. Estrada to help, and Mr. Estrada gave Senator KENNEDY a very detailed, courteous, respectful, specific answer that has taken me 3 or 4 minutes to read, and I am not through yet.

The point is, the other side keeps saying he has not answered questions when he has answered the questions. Not only has he answered them, he has answered them in a way a superbly qualified lawyer with his background might be expected to answer.

The Senator from Alabama:

Mr. Estrada, if you are confirmed in this position, and I hope you will be, how do you see the rule of law, and will you tell us, regardless of whether you agree with it or not, you will follow binding precedent?

Mr. Estrada:

I will follow binding case law in every case. I don't even know that I can say whether I concur in the case or not without actually having gone through all the work of doing it from scratch. I may have a personal, moral,

philosophical view on the subject matter, but I undertake to you that I would put all that aside and decide cases in accordance with the binding case law and even in accordance with the case law that is not binding but seems instructive in the area, without any influence whatsoever from any personal view that I may have about the subject matter.

What Mr. Estrada was saying to the Senator from Alabama was: Mr. Senator, with respect, I may not decide this case the way you would like for it to be decided because I will look at the case law and I will follow the case law, and I might even decide this case the way my personal view would decide it if the case law is different than my personal view. In other words, I think Mr. Estrada is giving the answer that most Americans want of their judges, regardless of what party they are in.

I will give a couple more examples, and I do this because this has gone on now 10 days. All I hear from the other side is he will not answer the questions, he is not answering the questions, when, in fact, there is a book full of questions and answers to which I believe law professors in the law school I attended would give a very high grade.

Here is the Senator from Wisconsin:

With that in mind, Mr. Estrada, I would like to know your thoughts on some of the following issues. Mr. Estrada, what do you think of the Supreme Court's effort to curtail Congress' power which began with the Lopez case back in 1995, the Gun-Free School Zone Act. That was a very controversial case. I remember my own view on that. I would have voted against it, even though, obviously, I am for gun-free school zones, but almost every Senator voted for it because they did not want to sound like they were against gun-free school zones, I guess, or whatever the reason might have been, but it was a controversial issue and a hard issue to vote against.

Mr. Estrada:

Yes, I know the case, Senator. As you may know, I was in the Government at the time, and I argued a companion case to Lopez that was pending at the same time and in which I took the view that the United States was urging in the Lopez case and in my case for a very expansive view of the power of Congress to pass statutes under the commerce clause and have them to be upheld by the court. Although my case, which was the companion case to Lopez, was a win for the Government on a very narrow theory, the court did reject the broad theory I was urging on the court on behalf of the Government.

In other words, Mr. Estrada was sticking up for the very people who are saying he will not answer their questions. He was there. That was his view, and he talks about it, and he answered the question:

Even though I worked very hard in that case to come up with every conceivable argument for why the power of Congress would be as vast as the mind could see, and told the court so at oral argument, I understand I lost on that issue in that case as an advocate, and I will be constrained to follow the Lopez case.

Here we are, Mr. President. Mr. Estrada took a position that I would have voted against. I think he is wrong, but he really did not take a position that I would vote against him. He argued a case before the court that made the very best argument he could make, arguing two lines of opinions. What our friends on the other side are saying is, when he writes a brief or argues a case on behalf of the United States, that somehow that reflects the point of view with which they disagree. I disagree with his brief. I would not consider voting against him or anybody else based on that kind of reason, a very complete answer.

Then if I may, I will state two more. Again, I would not normally think it was necessary for me to read the questions and read the answers, except that virtually every Senator from the other side who has come in has said he has not answered the questions, so I want the American people and my colleagues to know that if they want to know whether he has answered the questions all they need to do is go to the hearing record and read the question and read the answer.

Here is a tough one from the Senator from California:

Do you believe that Roe v. Wade was correctly decided?

There is no more a difficult question for a judge who comes before the Senate, because that is a terribly difficult issue about which we all have deeply held moral beliefs, and for all of us almost there is only one right way to answer the question, unless one believes that what judges are supposed to do is to interpret the law and apply the law to the facts.

Mr. Estrada's answer:

My view on that judicial function, Senator Feinstein, does not allow me to answer that question.

Then he goes on to explain what he meant.

I have a personal view on the subject of abortion, as I think you know. But I have not done what I think the judicial function would require me to do in order to ascertain whether the Court got it right as an original matter. I have not listened to the parties. I have not come to an actual case or a controversy with an open mind. I have not gone back and run down everything that they have cited. And the reason I have not done any of those things is that I view our system of law as one in which both me as an advocate and possibly, if I am confirmed, as judge have the job of building on the wall that is already there and not to call it into question. I have had no particular reason to go back and look at whether it was right or wrong as a matter of law, as I would if I were a judge that was hearing the case for the first time. It is there. It is the law, as has been subsequently refined by the Casey case, and I will follow it.

That is a complete answer to the most difficult question that could be asked of a nominee for a Federal judgeship.

Senator Feinstein: So you believe it is settled law?

Mr. Estrada: I believe so.

As I mentioned, if I understand the committee's rules, every Senator on the committee has the ability to ask followup questions. I know when I was confirmed by the committee they asked me many followup questions and I worked hard answering the questions 10 or 12 years ago when I was in the first President Bush's Cabinet. These are serious questions and serious answers.

Here I think is a revealing question, and one which may give us some idea of why we are in the 10th day of debate on one of the most superbly qualified candidates ever nominated for the court of appeals, a man who exemplifies the American dream. The Senator from Massachusetts, Mr. KENNEDY, asked this question:

Mr. Estrada, do you consider yourself a ''conservative'' lawyer? Why or why not? Why do you believe that you are being promoted by your supporters as a conservative judicial nominee? Do you believe that your judicial philosophy is akin to that of Justices Scalia and Thomas? Why or why not?

What Senator KENNEDY is looking for is to find out is this a conservative lawyer. Is the suggestion that we may want conservative decisions or liberal decisions? I thought we wanted fair decisions, based on precedent, based on fact. I thought we wanted judges who it would be impossible for us to tell where they were coming from before they were coming.

The response from Mr. Estrada is very interesting. He said to the Senator from Massachusetts:

My role as an attorney is to advocate my client's position within ethical bounds rather than promote any particular point of view, conservative or otherwise.

A-plus for that, I would say.

Mr. Estrada says:

I have worked as an attorney for a variety of clients, including the United States Government, State and local governments, individuals charged with criminal activity.

Are we going to say criminal lawyers cannot be confirmed because they represented people who murdered people and that makes them murderers?

Large corporations, indigent prisoners seeking Federal habeas corpus, in those cases I have advocated a variety of positions that might be characterized as either liberal or conservative.

Remember, this is from a career employee in the U.S. Solicitor's Office in the Clinton and Bush administrations. This is Miguel Estrada:

While I am grateful for the wide ranging and bipartisan support that my nomination has received, I have no knowledge of the specific reasons that might cause a particular supporter of my nomination to promote my candidacy for judicial office. As a judge I would view my job as trying to reach the correct answer to the question before me without being guided by any preconceptions or speculations as to how any other judge or justice might approach the same issue.

If all of the Senators would take the time to read Miguel Estrada's answers, some of them might end up in a textbook of appropriate answers, if they believe a judge's job is to apply precedent and consider the facts and come to a fair decision.

Miguel Estrada is qualified, and he is not just qualified, he is one of the most qualified persons ever nominated for

the Federal court of appeals. If he, by his very candidacy, represents the American dream that anything is possible, coming here from Honduras at age 17 and making his way through such a distinguished series of appointments, if he has answered the questions in what I would argue is a superior way, the way most nominees would be capable of answering the questions, and I have read just a few of them—I can come back and take another 2 or 3 hours and read more because there are hours of questions and answers—and if a majority of Members of the Senate have signed a letter saying they would vote to confirm him, then why can we not vote on Miguel Estrada?

The only reason can be that our Democratic friends want to change the way judges are selected. They want to say it takes 60 votes instead of 51, and they want to say the criteria for winning those votes is to answer the questions the way they want.

That will give us a Federal judiciary filled with partisans, or an empty Federal judiciary because we will be debating night after night because we cannot agree on whom to nominate and confirm. Such a process, if carried on in subsequent Congresses, will diminish the executive. It will diminish the judiciary. It will reduce the likelihood that facts will be considered and that binding precedent will apply. In other words, it will reduce the chance that justice will be done. It will reduce respect for the courts because it will be assumed that if partisan views on the case are what it takes to get confirmed by the Senate, then partisan views are what it takes to win a case before the court.

It reminds me of the story we tell at home about the old Tennessee judge. He was in a rural county up in the mountains and the lawyers showed up for a case one morning. He said: Gentlemen, we can save a lot of time. I received a telephone call last night. I pretty well know the facts. All you need to do is give me a little memorandum on the law.

We do not want a judiciary where those who come before it believe the judges got their political instructions when they were confirmed and that there is really no need to argue the case.

So Miguel Estrada is superbly qualified. Miguel Estrada has answered question after question, and he has done it very well. A majority of the Senate has signed a letter saying they are ready to vote today to confirm Miguel Estrada, and never in our history have we denied such a vote by filibuster to a circuit court judge. It is time to vote.

Before I finish my remarks, I make this pledge. I may be here long enough, and I hope it is a while, before I have an opportunity to cast a vote for a nominee for a Federal judgeship that is sent over by a Democratic President, but I can pledge now how I will cast my vote. It will be the same way I appointed 50 judges when I was Governor. I look for good character. I look for good intelligence. I look for good temperament. I look for good understanding of the law and of the duties of judges. I will look to see if this nominee has the aspect of courtesy to those who come before the court. I will reserve the right to vote against some extremists, but I will assume that it is unnecessary and unethical for the nominee to try to say to me how he or she would decide a case that might come before him or her. When it comes time to vote, when we finish that whole examination, I will vote to let the majority decide.

In plain English, I will not vote to deny a vote to a Democratic President's judicial nominee just because the nominee may have views more liberal than mine. That is the way judges have always been selected. That is the way they should be selected.

I conclude in equally plain English, and with respect, I hope my friends on the other side of the aisle would not deny a vote to Miguel Estrada just because they suspect his views on some issues may be more conservative than theirs.

These are the most serious times for our country. Our values are being closely examined in every part of the world. Our men and women are about to be asked, it appears, to fight a war in another part of the world. How we administer our system of justice is one of the most important values they are defending. We need to constrain our partisan instincts to get them under control. We need to avoid a result that changes the way we select judges. In my view, we permanently damage our process for selecting Federal judges.

The PRESIDING OFFICER. Before the Senator from Vermont is recognized, the Chair congratulates the Senator from Tennessee for his initial speech in this body.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I was about to congratulate the junior Senator from Tennessee on the same thing.

I am sorry that my good friend from Tennessee—whom I admire greatly; we worked together when he was in the President's Cabinet; we worked on many different things—I am sorry it happens to be a speech where he and I are on different sides. It was done with his usual care and cogency. He spoke to his experience, both as a former Governor with a distinguished record, a former Cabinet member with a distinguished record, one who served in business with a distinguished record. I appreciate having him here.

Sometimes debate can get rancorous and personal. To hear someone who takes a position, albeit different from mine, who does it with care, reflecting his past experience—I compliment the Senator from Tennessee.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Vermont.

Mr. LEAHY. Mr. President, we have heard a lot about Mr. Estrada and whether he has or has not answered questions. Obviously, I believe he has not. The President of the United States again today asked the Senate to do something that no President of either party should ask for. He asked the Senate to vote without having straightforward answers for a nominee for a lifetime position as a Federal judge on one of the most significant courts of this country.

That is not something that would help the Federal judiciary, but instead would set a dangerous precedent that would lessen the independence of the Federal judiciary. When a nominee does not answer basic questions, the Senate clearly has a constitutional responsibility to ask for the answers.

Mr. Estrada will not answer basic questions about his judicial philosophy, yet he has asked the Senate to confirm him to a lifetime job to the second highest court in the land where that judicial philosophy will determine, in many instances, which way that court will rule. That court affects every single American in countless ways through its decisions on everything from clean air and water to the rights of working men and women, from voting rights to all other civil rights law that protect minorities.

Becoming a Federal judge for a lifetime is a privilege, not a right. No nominee should be rewarded for stonewalling the Senate and the American people. The Constitution directs Senators to use their judgment in voting on judicial nominees, not to rubberstamp them.

The Democratic-controlled Senate confirmed a record 100 of President Bush's judicial nominees, acting faster and more fairly than the Republicans did with President Clinton's nominees. We began the process of the first hearing within 10 minutes of the time I became chairman of the Senate Judiciary Committee.

But President Bush has also proposed several controversial nominees, such as Miguel Estrada, who divide the American people and the Senate. The President can end this impasse. I hope he will act to give Senators the answers they need to make informed judgments about this nomination. The President can also help by choosing mainstream judicial nominees who can unite instead of divide the American people. The White House knows very well how easily and quickly they can bring this matter forward for a vote. They would rather make a political statement than to have a vote on a nomination.

Especially at a time when we have so many other issues before us—it has been said a record number of Americans are out of work—when a record number of jobs are being lost in this country, when more jobs are being lost under the President than any President, certainly in my lifetime, we are going to spend week after week in the Senate regarding an extremely highly paid lifetime job for one person.

It would seem a little bit more fair to those who do not have lifetime jobs, to

those who are not paid this amount, to the millions of Americans who have lost jobs during the last 2 years, to talk about ways of putting them back to work. I hope the President will pay attention to that.

I said more people have lost jobs during his Presidency than during the Presidency of certainly every President I have served with, and I believe any President in my lifetime.

We should be talking about preserving prescription drugs. Senator FEINGOLD will introduce the Preserving Prescription Drug Discount Act tomorrow. I am pleased to be an original cosponsor of this important legislation. It will address an issue of great concern to me and to so many of the moderates. American drug companies threaten to stop doing business with Canadian pharmacies. How does this affect us? Every one of us who is in a State that comes along the Canadian border is affected. This legislation is a response to the announcement by pharmaceutical giant GlaxoSmithKline to stop supplying Canadian pharmacies that provide American consumers the same prices the Canadians receive.

It is a sad commentary that the richest, most powerful nation on Earth has so many of our citizens who are forced to choose between buying necessities such as food and heat and the prescription drugs they need to live healthy, productive lives. Many Vermonters in these difficult circumstances cross the border into Canada to purchase prescription drugs at dramatically lower prices, sometimes saving up to 80 percent. There is a need for lower cost prescription drugs. It is unconscionable that at a time when pharmaceutical industry profits are soaring, a company such as Glaxo targets the most vulnerable consumers in order to protect what is for them a very large bottom line.

When we have 45 million Americans, most of them working Americans, who do not have medical insurance in this country, we have millions out of jobs and who have lost their jobs in the last 2 years, we ought to at least stand up and tell this pharmaceutical giant: Do not cut off this lifeline.

Vermont is so often at the forefront of developing innovative strategy to combat high health care costs, including announcing a partnership with Michigan and Wisconsin to buy prescription drugs in bulk. This will save the residents of these three States millions of dollars, and it is a step in the right direction toward making prescription drugs more affordable for our citizens.

Unfortunately, for the same consumers, Glaxo's new proposal represents a giant step backward. Both chambers of the Vermont State Legislature responded swiftly and passed a resolution regarding Glaxo's troubling plan, urging the company to reverse its policies. The Vermont lawmakers even went so far as to suggest it may consider requiring all of Glaxo's prescriptions to be considered through a review process before they could be prescribed to State-funded programs.

The Preserving Prescription Drug Discounts Act that my friend, Senator FEINGOLD, will introduce tomorrow, goes one step further than the Vermont House's recommendation.

Under this bill, companies that discriminate against Canadian pharmacies that pass along discounts to American consumers would not be allowed to deduct expenses related to research and development from their taxes.

Glaxco's policy would punish American consumers. There is no other way to describe it. It is not a policy that American taxpayers should support with Government benefits such as tax credits when they openly act to punish American consumers. We American consumers are also American taxpayers and should not have to give them even further benefits.

I hope the quick passage of this measure will prompt Glaxco to reconsider its policy. It is a wrong policy. It is a mean policy. It is an irresponsible policy. I hope other companies will think twice before copying such a mean and irresponsible policy.

We have a responsibility to take the steps necessary to ensure that our citizens have access to health care, including prescription drugs they need and deserve.

I have worked over the years to ease access to generic drugs, to ensure privacy for individuals' medical records, and to continue to work to ensure that our seniors and individuals with disabilities would soon have a voluntary prescription drug benefit as part of Medicare.

The health care challenges facing our Nation are complex. The solutions are not easy. It may take some time to find the necessary solutions to these challenges. In the meantime, we must embrace the issues we can promptly address. That is what the Preserving Description Drug Discounts Act will do. I hope other Senators will join in supporting Senator FEINGOLD.

Mr. President, as I said, I think it is unfortunate. This matter could easily be resolved. The White House is uninterested in doing that.

The President's Counsel almost derisively dismissed a suggestion made by one of the respected senior Republicans in this body for resolving this issue. It makes me think they do not want to bring this to a vote. They would rather talk about bringing this to a vote. That does very little for either the independence of the Federal judiciary, and certainly the question of the independence of the Senate.

At times I get the impression the White House considers the Senate some kind of a constitutional nuisance to be ignored. It is almost as though they issue marching orders, and the Senate should fall in line, from how we should organize on through.

Presidents come and go. I respect all the Presidents and admire their willingness to lead our great country. But the Senate stays here long after any individual President. We either fulfill our obligations of advice and consent or we become a rubberstamp. Prior to my becoming chairman, for 6 months the Republican majority of that time did not hold a single hearing on any of President Bush's judicial nominees. In 17 months I held hearings on 103, we confirmed 100, and voted down 2. That is on top of hundreds upon hundreds of other nominees for everything from U.S. Marshals to the Director of the INS to the head of the Drug Enforcement Agency to the U.S. attorneys. It was pretty productive.

When I listen to some of the statements being made by my friends on the other side, you would think we did nothing. Maybe they are thinking of the months upon months upon months when they would not move any judges for President Clinton and do not want to look at the fact that we were moving them almost every week. We had to, during 17 months. During those 17 months we had recesses, adjournments, anthrax attacks, the Senate being closed down after September 11. We kept turning out these judges.

Many were controversial. Most were conservative. We kept turning them out. Maybe to obscure the fact that we were moving President Bush's judges much faster than the Republicans moved President Clinton's, when we actually dared vote against one, the attacks that came. We were misquoted for our reasons. We had a judge who was defeated basically on questions of competence and willingness to follow the law. The Democrats who voted against him had all kinds of motives ascribed to them. We were told we called him a racist, even though I heard Democratic Senator after Democratic Senator say they did not consider him that. We had the religion of the majority of Members, Democratic Members in the Senate, attacked—including high officials of the Republican Party attacked the religious backgrounds of at least 8 members of the 10 members, Democrats in the Senate Judiciary Committee. But nobody, nobody wanted to discuss the fact that this particular judge was voted down because he was not qualified to be a circuit court of appeals judge.

These are the kinds of things. It is almost like no good deed will go unpunished. The Democrats moved through judges much faster for President Bush than Republicans did for President Clinton, and we are the ones being called obstructionists.

Mr. Estrada's short legal career has been successful. By all accounts he is a good appellate lawyer and legal advocate who has had a series of prestigious positions and is professionally and financially successful. As the grandson of immigrants, as a son, a father and grandfather, I know that no matter the

country of origin or economic background, a family takes pride in the success of its children. Mr. Estrada's family has much to be proud of in his accomplishments, regardless of the outcome of this nomination.

Mr. Estrada, who is now 41 years old, has a successful legal career at a prominent corporate law firm, which was the firm of President Reagan's first Attorney General William French Smith and that of President Bush's current Solicitor General Ted Olson. I am told that Mr. Olson, along with Kenneth Starr have been among Mr. Estrada's conservative mentors. At his relatively young age, Mr. Estrada has become a partner in the law firm of Gibson, Dunn & Crutcher having previously worked with the Wall Street law firm of Wachtell, Lipton, Rosen & Katz. While in private practice his clients included major investment backs and health care providers. Mr. Estrada's financial statement, which Senator HATCH inserted into the CONGRESSIONAL RECORD, says that he earned more than $500,000 a year two years ago and makes him look like a millionaire. At his hearing, Mr. Estrada testified: ''I have never known what it is to be poor, and I am very thankful to my parents for that. And I have never known what it is to be incredibly rich either, or even very rich, or rich.'' I will let his financial statement speak for itself on that point.

Mr. Estrada appears to be a highly successful and well-compensated lawyer in a first-rate law firm. As I say, his family and friends surely take pride in this success, and rightly so.

In the almost six years he has been with Gibson, Dunn & Crutcher, with its thriving appellate court practice and the successful Supreme Court practice developed by his senior partner Ted Olson, who was confirmed to be Solicitor General in June 2001, Mr. Estrada has apparently had only one argument before the Supreme Court, however. That was in connection with a habeas petition on which he worked pro bono when he first came to the firm. This is also one of the only pro bono cases he has taken in his entire legal career.

I would also note his role developing legal arguments and writing briefs on behalf of Governor Bush following the 2000 election that resulted in a 5 to 4 majority of the United States Supreme Court's intervention to halt the counting of ballots in Florida and resulting in the selection of President George W. Bush. This information failed to make it into Mr. Estrada's Judiciary Committee questionnaire and list of top 10 legal matters. We know about his involvement in that case because the Puerto Rican Legal Defense and Education asked him about it and included reference to it in their extensive report on this nomination.

Much has been said of Mr. Estrada's time working in the Office of the Solicitor General at the Department of Justice. I understand he was hired for that role by Kenneth Starr when he was the Solicitor General for the first President Bush in 1992. It was in that government post which Mr. Estrada continued during the first term of the Clinton administration in which he had 14 opportunities to argue before the Supreme Court. Of course, one of the principal functions of the Solicitor General's Office is to argue for the Government in behalf of the Supreme Court, and in fact argues more than anybody else. So it is no surprise when attorneys do so.

But there comes the rub. Mr. Estrada's supporters make much of his four and a half years in the Solicitor General's Office and say this qualifies him to an appointment to the DC Circuit. The work that he did, according to the supporters in the Solicitor General's Office, ipso facto qualifies him for appointment to the District of Columbia Circuit. But when we ask, Can we see the work he did? Oh, no, no. Take our word for it.

Interestingly enough, when I asked Mr. Estrada during the first meeting we had whether he had any objection to turning over the material and the work he did, he said no. He would be glad to. He is proud of it. It reflected his views. He would be glad to turn it over. When he was asked during the hearings whether he would be willing to turn it over, he personally would be willing to do so. He was under oath and he said certainly. But the administration says no.

The Administration is seeking to have it both ways: Credit Mr. Estrada with the experience while forbidding the Senate from reviewing for itself what he did in that government job. Given the public comments of a former Deputy Solicitor General and Mr. Estrada's direct supervisor at the Office of Solicitor General, as well as the lack of a written record of Mr. Estrada's views and judicial philosophy and Mr. Estrada's failure at his hearing to satisfy Senators by responding to their questions, there is ample basis on which to request the production of government work papers from the time during which Mr. Estrada was in the Solicitor General's Office. There is also ample precedent for such papers being shared with the Senate in the past.

It makes you wonder why they won't show us Mr. Estrada's paperwork. The same paperwork that was made available during the Carter administration. It was made available during the Reagan administration. It has been made available actually every time the Senate Judiciary Committee has asked for it.

The Democratic leader pointed out the way to resolve the stalemate in his February 11, 2003, letter. It is curious. We asked for materials of cases long since decided. We are not asking for material on a pending case. Certainly, if there is material on a pending case, I would be willing to listen to an argument to hold that back. But how can we argue to hold back on material on a case long decided?

When similar requests were made of material written by William Rehnquist, it was forthcoming. When similar requests were made for material written by Robert Bork, it was forthcoming. When similar material was requested written by Benjamin Civiletti, who became Attorney General, it was forthcoming. When similar material was requested for the nomination of William Bradford Reynolds, it was forthcoming. When similar material was requested for the nomination of Steven Trott, it was forthcoming. But then when it is requested of Mr. Estrada—and this is the only time I can remember such a request being turned down—it is turned down.

Again, you have to ask why. What is in there that they don't want us to see?

Take the public comments of a former Deputy Solicitor General, Mr. Estrada's direct supervisor at the Office of Solicitor General, as well as the lack of a written record of Mr. Estrada's views and judicial philosophy and Mr. Estrada's failure during hearings to satisfy Senators by responding to their questions, then there is ample bases on which to request products of Government workpapers during the time in which Mr. Estrada was in the Solicitor General's Office—papers put together and being paid for by the taxpayers in a job which the administration now says shows why he is entitled to be in this lifetime position. There is ample precedent for such papers being shared with the Senate in the past.

I cannot think of a time when the papers were requested when the administration turned them down.

Professor Bender, Mr. Estrada's supervisor at the Office of the Solicitor General, indicated that when he was supervising Mr. Estrada he did not view Mr. Estrada as reading the law fairly. He viewed Mr. Estrada as one whose personal views and desires colored his readings and presentations of the law, and as someone who might well be an ideologue to be appointed to the bench.

I would think if Senators are going to be fair about this nomination, whether they are Republicans or Democrats, they would want to know the answer to that before they put somebody in a lifetime position.

Mr. SANTORUM. Mr. President, will the Senator yield for a question?

Mr. LEAHY. I would prefer not to until I finish these comments.

The PRESIDING OFFICER. The Senator from Vermont has the floor.

Mr. LEAHY. Thank you.

But the reason we say this, if this work is what qualifies him, then we ought to know what he did in this work.

Now, Professor Bender, Mr. Estrada's supervisor, is reported to have stated that Mr. Estrada was so ''ideologically driven that he couldn't be trusted to state the law in a fair, neutral way.'' He stated that he ''could not rely on [Mr. Estrada's] written work to be a neutral statement of the law.'' He also

indicated that he viewed Mr. Estrada as ''smart and charming, but he is a right-wing ideologue'' and one who ''lacks judgment.''

Now, this is somebody who has actually seen his work. Unlike those of us who are not allowed to see it, he has seen it.

Veteran Supreme Court lawyer Carter G. Phillips has also noted that Mr. Estrada, while ''extremely self-confident'' is a ''more strident personality'' than the other current nominee for this court, John Roberts.

In fact, when Professor Bender ventured these honest opinions, he suffered partisan attacks by Republicans. Similar to what happened to those of us on the Democratic side on the Judiciary Committee, who had our religion attacked by Republican officeholders because we dared to vote against one of President Bush's nominees, Professor Bender was attacked because he dared to question one of President Bush's nominees.

He was maligned for serving as the general counsel to a commission appointed by President Nixon. He was maligned for legal positions taken by the Clinton administration. Republicans have chosen character assassination and demonization of Professor Bender. Their approach is to deny access to Government records and to seek to destroy anyone who would raise a concern about Mr. Estrada's ideology affecting his legal work.

To his credit, Professor Bender was not intimidated by these personal attacks. He wrote to Chairman Hatch reaffirming his views just days ago. He also did this because he found that he was being misquoted time and time again on the floor of the Senate, and he wanted us to know exactly what his views are.

Contrast this to what the Senate Democrats are trying to do. We would like to get to the merits of the matter. The administration has responded by stonewalling our request. They have attacked us for our attempts to reach a fair resolution of this matter.

I would like to have the papers. I would like to have a hearing where we could ask questions from the papers, where we actually know what is in these things that they say substantiate the reason for Mr. Estrada's nomination.

The administration wants to have it both ways. They say, if you saw these brilliant writings, then you would want him to be a judge. So we say: Fine, let's see the writings. They say: Oh, no, you can't see them. Take our word.

You can't really have it both ways. If this is what shows he is qualified to be a judge, then let us see what is in it and then let us make up our own minds. Then Senators can vote for or against, but at least they will know what it is based on.

One major person in his department says he is not qualified. We are not relying on that. We would like to see the papers and make up our own mind.

One of the significant questions raised by this nomination is whether Mr. Estrada will be a fair judge without a political agenda. To ascertain that, let's review his work when he was serving in a position of trust for the United States, paid for by the American taxpayers.

I believe it is fair to explore whether Mr. Estrada stated the law in a fair and neutral way while asked to do so in the Solicitor General's Office. Remember, the Solicitor General is not just an advocate before the U.S. Supreme Court. The Solicitor General is that unique person, in arguing before the U.S. Supreme Court, who is expected—by the Court and by the American people—to state the law objectively.

I have heard the Solicitor General before the U.S. Supreme Court—in years past, and even from my days in law school—saying things to the effect: Here is the law that would uphold the position of the Government, but the Court should be aware that there is another body of law on the other side. They are supposed to state it fairly and impartially so the Court can rely on them.

Having said that, we have somebody in the Solicitor General's Office preparing this material so that the Supreme Court can be given an objective, fair, and evenhanded view of the law. Isn't it fair game to ask whether that person fulfilled their duty in the Solicitor General's Office? Isn't it fair to ask, when they prepared such material, whether they did it in a fair, evenhanded fashion? Or did they do it in an ideological manner? Did they do it to carry out an agenda?

I think it is a particularly significant question. We are faced with a nominee for a lifetime appointment to a Federal court, and to a Federal court as important as the D.C. Circuit. Usually when somebody is being nominated to such an important court, they have been a judge, they have been a district court judge, they have had a position where you have been able to see how they interpret the law and how they use it, and whether they did so fairly.

That is not the case here. Here we have one place—one place—where by law, custom, and practice he is required to state the law in an evenhanded fashion, not ideologically driven but impartially driven. And the one place where we can ask whether he did that or not, the administration says: Trust us. He did, but we will not show you.

I remember that wonderful saying that President Reagan made up, to the great surprise of the Russians, because he said it was a Russian saying it; but, still, it is a wonderful saying, where he said: Trust but verify. Well, I am tied at the hip with former President Reagan on this one. I will trust, but I would like to verify. I would like to verify.

I think Senators should have the opportunity to review for themselves the documents Mr. Estrada wrote and make their own independent judgments about Mr. Estrada's writings and his ability to apply the law without regard to strongly held personal beliefs.

Objectivity and openmindedness are crucial to appellate deliberations and decisionmaking. This is an area where we could answer that question. We can answer the question. In the Office of the Solicitor General there is a requirement to be objective, not ideological, a requirement to be straightforward and not political. But we are not allowed to see whether he fulfilled that requirement. Don't you think we should at least ask if it was there?

If he had been a district judge before, and had written opinions, which would show whether he was objective and evenhanded, wouldn't we say, let's read them? I cannot imagine any Republican or Democrat saying we would not read them before we made up our mind.

Well, he was not a district judge. But he was in a position where he was required to be nonideological, where he was required to be honest, where he was required to be straightforward, where he was required to be nonpolitical, and we are not allowed to see that record.

Let's see the record. Let us ask questions about it, especially in this case, where one of the people who has looked at the record—one of his supervisors—questions whether he was objective. Isn't that something we should determine? In a job where he was required by law, by practice, and by custom to be objective and nonideological, and intellectually honest, if you have somebody who says he was not, so shouldn't we know that? Because if that is the case—when he is there just for a term—how much worse will it be if it is a lifetime position?

Let's have those papers. Let's ask the questions. Then let Senators make up their minds. I am never going to vote for a judge if I cannot have the answers. I remember when President Clinton had nominees held up here for 2, 3, 4 years. My friends on the Republican side asked question after question. Some were legitimate, some were not. I remember one being asked how she voted on a secret ballot in a State election. I think we can all agree that is a question nobody should be asked—how they vote in an election in a State. But we waited year after year, and they said they must have these answers. Shouldn't we?

I heard that Mr. Estrada was editor of the Harvard Law Review. Some have gone so far as to make it seem as if he was editor in chief or president of the review. That would be pretty impressive. Actually, he was one of 70 student editors working at the Harvard Law Review in 1986. That should be impressive enough. I think most law students would say that is pretty darn impressive. But you don't have to embellish it, as some of his supporters have, and make it far more than what it was. I am impressed that he was 1 of 70. You don't have to embellish it to say he was the No. 1 editor in chief.

We have a lot of people who fall into that category. Claire Sylvia, who worked for a time at our Senate legal counsel's office, was one of those editors. I never remember her claiming to be the editor in chief.

Mr. REID. Will the Senator yield for a question?

Mr. LEAHY. Yes.

Mr. REID. Did I hear the Senator right that all these statements I have heard on the Senate floor that he was the editor—in fact, he was one of 70 editors?

Mr. LEAHY. Yes, 70.

Mr. REID. That is a distinction, but it is not the editor in chief.

Mr. LEAHY. That is what I am saying. We have had a lot of people who worked for the Senate and for our committees and worked for various Senator's offices who have been one of those 70. It is a proud achievement. I keep worrying when we are seeing somebody gilding the lily on this person, when we see his background and his history change constantly to make it better and better. Well, he has things to be proud of, but you wonder why his supporters have to constantly change it and embellish it.

Jeff Toobin, who has become a journalist, author, and legal commentator, was a student editor there that year. Actually, the supervising editor, who had a far more significant position, was none other than Elena Kagan. I mention this because my friends on the other side said that Mr. Estrada's being one of the 70 editors is reason to be on the court. Elena Kagan was a supervising editor. Now, that is really significant. Professor Kagan is a Harvard law professor. Professor Kagan served as Mr. Estrada's supervising editor, got the highest qualification by the ABA; and based on those qualifications, President Clinton nominated her to the DC Circuit.

I mention this because so much has been made by those on the other side, who say even if you are one of the 70 editors, and got a high qualification from the ABA, that should be enough. Elena Kagan was a law professor and was a supervising editor. She was nominated by President Clinton, but guess what happened. The Republicans never allowed her to even have a hearing, to say nothing of a vote. She was humiliated, not even allowed to have a hearing, to say nothing about a vote.

I worry when I hear Mr. Estrada's supporters talk about his family history. I was impressed when talking to him about his family. But I remember the first stories, and you have heard them repeated here. You almost thought he was a barefoot immigrant coming to America, unable to speak English, and so on and so forth. Actually, he grew up in a relatively wealthy and privileged household. His parents sent him to private school in Honduras, where the annual cost was almost the same as the annual per capita income for most Hondurans during that period.

According to news accounts, his late father was a prominent and politically conservative lawyer who helped found the country's first private university and was also a bank vice president.

I recall that the Honduran Ambassador took time out from his busy schedule last fall to attend a Judiciary Committee hearing, which made me think about the rumors that had circulated that Mr. Estrada's family included relatives who had been on the country's diplomatic corps. I understand his mother was a successful accountant in her own right. She should be proud of that. She is the daughter of a teacher-diplomat. Mr. Estrada completed 12 years of primary and secondary education at a private academy and at a university where he studied English. These are all commendable things—but a lot different than the image we are given.

Again I ask, why not just tell the story as it is? Why not tell the story straightforward and show us the papers straightforward? Why do you have to constantly embellish things? That is why when I am told by the administration: Just trust us, we have looked at the papers and he was objective and honest and nonideological, take our word for it—I haven't been able to take their word for much in this case so far. Why should I take it for something that they don't want me to see?

We do know some things about him. According to news accounts, after one of his mentors, Kenneth Starr, left the Office of the Solicitor General, he said Estrada was ''left working for a Justice Department whose views he didn't always agree with.''

While at the Solicitor General's Office, Estrada did argue 14 cases before the Supreme Court, primarily criminal matters, but sometimes in the area of banking law. It is worth noting that Seth Waxman was not listed as Solicitor General on the briefs of any of those cases and, apparently, did not directly supervise his work.

When he joined Gibson, Dunn & Crutcher and worked with Ted Olsen, Mr. Estrada gave interviews in which he defended Ken Starr's investigation of President Clinton. He has a right to do that. Some of us would question the $75 million to $100 million that was wasted on the investigations, but Mr. Estrada felt they were well worthwhile. He helped on then-Governor George Bush's litigation over the election results in Florida. He went on to the Justice Department transition team.

I outline this personal history because some partisans have taken liberties with Mr. Estrada's personal and professional background in order to try to make his case more compelling. There is no doubt that Mr. Estrada is a rising star in conservative legal circles. He is a Federalist Society member and has been mentored by Kenneth Starr and Ted Olson.

Certainly, he has a right to be involved with the Federalist Society. There is nothing wrong with that. In fact, he should probably use the membership.

One judicial nominee at his hearing was honest and said he hadn't really heard of the Federalist Society. But he was told if he wanted to be a judge with this administration, he better go join it. He did and he is a judge. It worked for him. In this case, it has served him well, as it has a number of other executive branch nominees.

This organization is sometimes mischaracterized as a mere debating society, and, as I said, one nominee was very honest while under oath and said: Yes, he was told to join it.

They say about themselves:

> The Federalist Society for Law and Public Policy Studies is a group of conservatives and libertarians interested in the current state of the legal order.

They state one of their goals is the ''reordering of priorities within the legal system'' and its objective ''requires restoring the recognition of the importance of lawyers, judges, and law professors.''

I am not sure how Mr. Estrada plans to reorder priorities and values if he is confirmed as a judge, but we know he has strongly held views he will not share with us. Again, we go back to the one area where he is required to be objective, not ideological, and nonpolitical, and that it in the Office of the Solicitor General. But those writings we are not allowed to see. Those writings would show if he is able to be nonideological, nonpolitical, and straightforward because he is required to in the Solicitor General's Office, but they will not show us what he wrote.

What worries me is that a man who has had so many embellishments made on his record by his supporters, when his supporters question everything from the religion to the biases of those who dare question him, it makes one wonder why do they hide this.

In his hearing testimony, Mr. Estrada did admit ''having made some pretty ruthless assessments and the legal views of some [government] agencies which I'm glad to say were sometimes vindicated in the courts later. . . .

He did not tell us what those assessments were. He did not say which cases vindicated his views. We are left to wonder whether given the awesome power of a lifetime appointment as a Federal judge that he would act on his own ''ruthless assessments'' or on the facts, the litigants, and the law before him.

His friends and supporters acknowledge that Mr. Estrada has strong conservative views. In fact, they acknowledge far more than Mr. Estrada himself. His classmate Arturo Corrales, a former Presidential candidate in Honduras, said Mr. Estrada's socially conservative views were already evidenced when he was a teenager, including his opposition to abortion. Other colleagues acknowledge his strong views as well. His former law school classmate, Ron Klain, supports him even though Mr. Estrada is ''politically conservative'' and ''has passionate views

about legal policy.'' His former colleague Robert Litt supports Mr. Estrada's confirmation, even though he disagrees with his ''legal philosophy.''

They do so, however, with the luxury of knowing what Mr. Estrada's views of the Constitution are. That is a luxury that 100 Members of this body do not have. Mr. Estrada refused to share those views with those entrusted by the Constitution with determining whether he should be accorded the power of a lifetime Federal judicial appointment. The Senate wants to know before making that decision whether he can be trusted to apply the law fairly and impartially without regard to his deeply held ideas and views, whatever they may be. It is hard to imagine that he would freely cast his views aside and be objective in a court when he will not even tell us what they are.

Members of the Congressional Hispanic Caucus who met with him noted that Mr. Estrada ''did not demonstrate a sense of inherent 'unfairness' or 'justice' in cases that have had a great impact on the Hispanic community.''

They noted that, in their view, the ''appointment of a Latino to reflect diversity is rendered meaningless unless the nominee can demonstrate an understanding of the historical role courts have played in the lives of minorities in extending equal protections and rights.''

Similar concerns have been raised by the Latino Vermonters and many others. For example, the Puerto Rican Legal Defense and Education Fund—this is a national civil rights organization concerned with advancing the civil and human rights of the Latino community, also submitted a strong statement of opposition, and they reviewed all his available writings.

They conducted dozens of interviews with individuals who have studied and worked with Miguel Estrada, and well as those who lived in the same communities with him. They also surveyed news reports and public materials concerning Mr. Estrada.

They also interviewed Mr. Estrada. They noted that ''a number of his colleagues have said unequivocally that Mr. Estrada has expressed extreme views that they believe to be outside the mainstream of legal and political thought.''

They go further to say that he has ''made strong statements that have been interpreted as hostile to defendants' rights, affirmative action, and women's rights.''

They also expressed concern about his temperament. They interviewed people who described him as ''arrogant and elitist'' and that he ''harangues his colleagues'' and ''doesn't listen to other people.'' In their interview, Mr. Estrada was not even tempered and was ''contentious, confrontational, aggressive and even offensive in his verbal exchanges'' with them.

After a thorough review, the Puerto Rican Legal Defense and Education Fund concluded that Mr. Estrada was not sufficiently qualified for a lifetime seat on the Nation's second highest court, and then the PRLDEF said ''that his reportedly extreme views should be disqualifying; that he has not had a demonstrated interest in or involvement with the organized Hispanic community or Hispanic activities of any; and that he lacks the maturity and judicial temperament necessary to be a circuit judge.''

Similarly, the Mexican American Legal Defense and Education Fund, MALDEF, and California La Raza Lawyers, CLRL, have expressed ''serious concerns about whether Mr. Estrada would fairly review issues that came before him. MALDEF and CLRL said:

> [I]t is unclear whether he would be fair to Latino plaintiffs as well as others who would appear before him with claims under the first amendment, the fourth amendment, the fifth amendment, and due process clauses in the U.S. Constitution. Further, we found evidence that suggests he may not serve as a fair and impartial jurist on allegations brought before him in the areas of racial profiling, immigration, and abusive or improper police practices where those practices are adopted under a ''broken window theory'' of law enforcement. We have concerns about whether he would fairly review standing issues for organizations representing minority interests, affirmative action programs, or claims by low-income consumers. We are also unsure, after a careful review of his record, whether he would fairly protect labor rights of immigrant workers or the rights of minority voters under the Voting Rights Act.

These are leading Latino organizations that say that about him.

We have heard from numerous chamber of commerce-related organizations and Republican organizations expressing support, the same Republican organizations able to send five people to Vermont to talk about him. They were really silent when other Latinos were nominated to the court by President Clinton. There are Latino judges out there; 80 percent of the Latinos on the courts of appeals now were appointed by President Clinton. There actually would have been several more, but they were blocked by the Republicans. They were not allowed to have hearings, they were not allowed to have votes, and none of these Republican organizations that are suddenly concerned about the plight of Latinos came forward when one after another was blocked by the Republicans during the Clinton administration.

The spokesperson for the newly minted Coalition for a Fair Judiciary—I love these terms—explains that organization is made up of 70 or more conservative organizations, arose from a similar group called Americans for Ashcroft and is supportive of President Bush's judicial nominees because of their ideology.

We are not allowed to question ideology, but the supporters say because of their ideology they should be confirmed.

Diversity is one of the great strengths of our Nation, and that diversity and background should be reflected in our Federal courts. I only wish some of these same conservative organizations suddenly available today were interested in diversity when President Clinton's minority women nominees were being delayed and derailed by Senate Republicans between 1996 and 2001. They were nowhere to be found or worse yet, arguing for delay, obstruction and defeat of those qualified Hispanic, African-American and female nominees.

Race or ethnicity and gender are, of course, no substitutes for the wisdom, experience, fairness, and impartiality that qualify someone to be a federal judge entrusted with a lifetime appointment. White men should get no presumption of competence or entitlement. Hispanic and African American men and women should not be presumed to be incompetent. All nominees should be treated fairly.

When one gets down to the bottom line, the burden of proof of suitability for lifetime appointment rests on the nominee and the Administration. We must carefully examine the records of all nominees to high offices, but we know the benefits of diversity and how it contributes to achieving and improving justice in America. As Antonia Hernandez wrote in the Wall Street Journal: ''The fact that a nominee is Latino should not be a shield from full inquiry, particularly when a nominee's record is sparse, as in Mr. Estrada's case. It is vital to know more about a nominee's philosophies for interpreting and applying the Constitution and the laws.'' Members of the Congressional Hispanic Caucus has said much the same thing.

Our freedoms are the fruit of too much sacrifice to fail to assure ourselves that the judges we vote to confirm have a commitment to upholding the Constitution, following precedent, and listening to claims without fear or favor. When a President is nominating individuals to tip the balance, stack the deck, or to pack the courts with ideologues, the Senate would be abdicating its responsibilities to ignore the very criteria that led to selection of such a nominee.

So, when some organizations come forward and say they are supporting a nominee because of their ideology, they cannot at the same time say we should not ask about that ideology. When the supporters come forward and say his brilliant writings in the Solicitor General's Office qualify him to be a judge, they cannot then in the next breath say, but you cannot see what those brilliant writings were, you have to take our word for it.

Under our Founders' design, the political branches share the power of appointment: the President has the power to nominate or propose judges, but the Senate has a corresponding power to confirm or reject those nominations. That is one of the ingenious checks and balances of our federal system. If a nominee's record, or lack of a record, raises doubts, these are matters for

thorough scrutiny by the Senate, which is entrusted to review all of the information and materials relevant to a nominee's record relating to fairness, impartiality, bias, experience, or other matters.

Unlike elected officials, these are lifetime jobs, so the Senate Judiciary Committee must undertake an inquiry to be assured that a nominee should be confirmed to high office. When there is no judicial experience to look to, it is all the more critical that the Committee inquire fully into a nominee's experience, record, views and understanding of our fundamental rights.

Now, Chairman Hatch is saying precisely the same thing I am saying. The difference is, he said this speaking to the Federalist Society. He said this when President Clinton was nominating the judges, not when President Bush was nominating them.

In 1997, he told the Utah Chapter of the Federalist Society that ''the Senate can and should do what it can to ascertain the jurisprudential views a nominee will bring to the bench in order to prevent the confirmation of those who are likely to be judicial activists. Determining who will become activists is not easy since many of President Clinton's nominees tend to have limited paper trails . . . . Determining which of President Clinton's nominees will become activists is complicated and it will require the Senate to be more diligent and extensive in its questioning of nominees' jurisprudential views.'' In the case of Mr. Estrada, however, the nominee has refused to provide us many answers at all about the types of jurisprudential views referenced by Chairman HATCH.

Sauce for the goose, Mr. Chairman, sauce for the gander. You were right then. I take the same position today. I am right.

The difference is, President Clinton's nominees turned over those papers.

Most Americans want nominees who will be fair and impartial judges. An independent judiciary is the people's bulwark against a loss of their freedoms and rights. I think the rights at stake are simply too important to take a chance on a lifetime appointment to this high court, to make a decision we cannot reverse, if Mr. Estrada were to turn out to be the activist and ideologues that many of those who have heard him speak candidly. What little record we have calls into question whether he would be neutral referee or an advocate and activist from the bench.

In closing, he had a job in which he was required by law, by custom, by practice, to be impartial and nonideological. He wrote extensively in that taxpayer-funded job where he was required to be nonideological, impartial, straightforward, but he will not show what he wrote.

We are told by the administration, trust us. We have looked at it. He is impartial. We say, then let us see it. Ah, you say, well, then you are a racist, or you have a religious bias, or whatever might be the reason of the day. We have heard so many misstatements from the other side about Mr. Estrada, let's go to the one thing that can be looked at objectively: His writings.

It can be done. A distinguished member of the other party has suggested that it be done. The White House ought to listen to him and they should stop saying opposition to the nomination of Miguel Estrada is anti-Hispanic. We have risen in this Chamber day after day to demonstrate why this is false, referring to, among other things, the numbers of well-known and well-respected Latino organizations who also oppose this nomination.

We have introduced into the record letters from organizations such as the Mexican American Legal Defense Fund, opposed to Mr. Estrada; the Southwest Voter Registration and Education Project, opposed to Mr. Estrada; the Puerto Rican Legal Defense and Education Fund, opposed to Mr. Estrada; a letter from 52 Latino labor leaders, opposed to Mr. Estrada; the Puerto Rican Bar Association of Illinois, opposed to Mr. Estrada. Each one of these explain their thoughtful and principled opposition to Mr. Estrada's nomination.

Today we received another letter from another Latino organization expressing its opposition to the Estrada nomination. The Hispanic Bar Association of Pennsylvania has written that it, too, opposes Mr. Estrada's confirmation to the U.S. Court of Appeals for the DC Circuit. The Hispanic Bar Association of Pennsylvania did not come to this decision lightly.

As the letter says, they created a special committee on judicial nominations. They developed a process to review candidates for the Federal judiciary. They examined Mr. Estrada's record. They considered a variety of factors in their evaluation. They even asked Mr. Estrada to come meet with them. In the end, they conclude they must oppose him. I respect what must have been a difficult decision, but I think letters from the Hispanic Bar Association of Pennsylvania and all these other Latino organizations in opposition to him show that the opposition is not just because he is Hispanic.

I ask unanimous consent that the letter be made a part of the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HISPANIC BAR
ASSOCIATION OF PENNSYLVANIA,
Philadelphia, PA, January 28, 2003.

Re nomination of Miguel A. Estrada.

Hon. PATRICK J. LEAHY,
U.S. Senate Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR HONORABLE SIR: I am writing on behalf of the Hispanic Bar Association of Pennsylvania (HBA) to inform you that we oppose the appointment of Miguel Angel Estrada to the United States Court of Appeals for the District of Columbia Circuit. For the reasons that follow, we urge you to vote against Mr. Estrada's confirmation.

The HBA recognizes that Mr. Estrada's nomination was pending for some time prior to his hearing before the Senate Judiciary Committee on September 26, 2002. Nevertheless, it was the Hispanic National Bar Association's public endorsement of this candidate that prompted our organization to initiate its own evaluation of Mr. Estrada.

To that end, the HBA created a Special Committee on Judicial Nominations to develop a process for reviewing and potentially endorsing not only Mr. Estrada, but also all future candidates for the Judiciary. As part of the process, we contacted Mr. Estrada, asked to interview him, and invited him as a guest of the HBA to meet the members of our organization. Mr. Estrada, for stated good cause, declined our invitations. Notwithstanding Mr. Estrada's non-participation, the Committee completed its work and reported its findings to the HBA membership on November 14, 2002. Following the Committee's recommendation, the membership voted not to support Mr. Estrada's nomination.

The HBA recognizes and applauds Mr. Estrada for his outstanding professional and personal achievements. Indeed, the HBA adopts the American Bar Association's rating of ''well-qualified'' with regard to Mr. Estrada's professional competence and integrity. However, employing the ABA's seven established criteria for evaluating judicial temperament, the HBA finds Mr. Estrada to be lacking. Our organization could find no evidence that Mr. Estrada has demonstrated the judicial temperament required by a nominee for such an important and sensitive judicial position. In addition, the HBA seeks to endorse individuals who have ''demonstrated awareness and sensitivity to minority, particularly Hispanic concerns.'' Sadly, we also could find no evidence of this quality in Mr. Estrada.

The HBA shares the concern of the President of the Judiciary Committee that only the best-qualified and most suitable individuals be appointed to the federal bench. Furthermore, the HBA appreciates the efforts, as evidenced by Mr. Estrada's nomination, to consider and promote members of the rapidly growing Latino population to positions of high visibility and importance. However, we believe that there are a myriad of other well-qualified Latinos whose integrity, professional competence, and judicial temperament would be beyond reproach and who would therefore be better suited for this position.

The Hispanic Bar Association of Pennsylvania regrets that it cannot support the nomination of Mr. Estrada to the United States Court of Appeals for the District of Columbia Circuit. We respectfully request that you oppose the confirmation of his nomination.

Respectfully submitted,
ARLENE RIVERA FINKELSTEIN,
President.

Mr. LEAHY. I see my good friend, the distinguished chairman, on the floor. I hope he has had a chance to go out and get a bite to eat, as we have been doing. He certainly deserves it.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 459 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LEAHY. I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask unanimous consent that the distinguished Senator from

Ohio speak next for 15 minutes, the distinguished Senator from Oklahoma speak after that for 5 minutes, and then I be yielded the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I rise today to speak on behalf of the nomination of Miguel Estrada to the DC Circuit Court of Appeals. I had intended to finish my remarks this evening by reading an editorial from the Washington Post. I have listened patiently to the distinguished Senator from Vermont, and I would like very much to quote from the Post editorial because it is looked upon as one of the most objective papers in the United States of America. Some of my colleagues think it has a liberal tilt to its editorial policies. This is a February 18th editorial from the Washington Post:

The Senate has recessed without voting on the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit. Because of a Democratic Filibuster, it spent much of the week debating Mr. Estrada, and, at least for now, enough Democrats are holding together to prevent the full Senate from acting. The arguments against Mr. Estrada's confirmation range from the unpersuasive to the offensive. He lacks judicial experience, his critics say—though only three current members of the court had been judges before their nominations. He is to young—though he is about the same age as Judge Harry T. Edwards was when he was appointed and several years older than Kenneth W. Starr was when he was nominated. Mr. Estrada stonewalled the Judiciary Committee by refusing to answer questions—though his answers were similar in nature to those of previous nominees, including many nominated by Democratic presidents. The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a letter from all living former solicitors general attests. He is not a real Hispanic and, by the way, he was nominated only because he is Hispanic—two arguments as repugnant as they are incoherent. Underlying it all is the fact that Democrats don't want to put a conservative on the court.

Laurence H. Silberman, a senior judge on the court to which Mr. Estrada aspires to serve, recently observed that under the current standards being applied by the Senate, not one of his colleagues could predictably secure confirmation. He's right. To be sure, Republicans missed few opportunities to play politics with President Clinton's nominees. But the Estrada filibuster is a step beyond even those deplorable games. For Democrats demand, as a condition of a vote, answers to questions that no nominee should be forced to address—and that nominees have not previously been forced to address. If Mr. Estrada cannot get a vote, there will be no reason for republicans to allow the next David S. Tatel—a distinguished liberal member of the court—to get one when a Democrat someday again picks judges. Yet the D.C. Circuit—and all courts, for that matter—would be all the poorer were it composed entirely of people whose views challenged nobody.

Nor is the problem just Mr. Estrada. John G. Roberts Jr., Mr. Bush's other nominee to the D.C. Circuit, has been waiting nearly two years for a Judiciary Committee vote. Nobody has raised a substantial argument against him. Indeed, Mr. Roberts is among the most highly regarded appellate lawyers in the city. Yet on Thursday, Democrats invoked a procedural rule to block a committee vote anyway—just for good measure. It's long past time to stop these games and vote.

We all know of Mr. Estrada's illustrious background. I will not rehash his stellar credentials. We have already heard many of our colleagues come to the floor and tell what I refer to as the ''only in America'' story about Estrada's unprecedented rise from his home in Honduras to his current position as a partner with one of Washington's distinguished law firms.

My colleagues on the other side of the aisle have leveled many complaints against Mr. Estrada, including that he has not had enough judicial experience. I note the following: 26 circuit judges had no judicial experience when they were nominated by President Clinton; they were all confirmed. Of the 108 individuals who have served on the Supreme Court, 43 had no judicial experience at all. In fact, in the entire history of the Supreme Court of the United States, 8 of the 16 chief justices in America's history had no prior judicial experience. Of those justices appointed in the last 50 years, Justices William Rehnquist, Lewis Powell, Jr., Abe Fortas, Arthur Goldberg, and Byron White had no prior judicial experience when appointed to the Supreme Court.

On the circuit court to which Mr. Estrada has been nominated, five of the eight judges had no previous judicial experience before taking the bench, including two Clinton nominees and one Carter nominee.

On the other hand, Miguel Estrada has a combined level of appellate and trial experience that far exceeds that of the average court of appeals nominee. Mr. Estrada's experience even exceeds that of many Supreme Court nominees. He has argued 15 cases before the U.S. Supreme Court, both criminal and civil. He has tried 10 cases as a prosecutor, argued 7 cases before the U.S. court of appeals for the second district, as assistant U.S. attorney for the southern district of New York.

I emphasize to my colleagues the American Bar Association has rated Estrada well qualified, a rating that my colleagues on the other side of the aisle have called the gold standard. I heard before: Your nominees, Mr. President, are going to have to reach the gold standard of the American Bar Association. Judge Estrada has met the gold standard of the American Bar Association.

My colleagues have also launched criticism at Mr. Estrada for not turning over documents—I heard that this evening several times—that he worked on while he was employed by the Office of the Solicitor General. What they do not mention is that these documents are confidential. These confidential memos were not requested of the seven previous nominees to the court of appeals who had worked in the Solicitor General's Office.

In addition, and I think this is very important, every living Solicitor General, both Democrat and Republican, signed a joint letter to former Judiciary Committee chairman, Senator LEAHY, stating that fulfilling this request would have a debilitating effect on the ability of the Department of Justice to represent the United States before the Supreme Court.

Mr. VOINOVICH. This is a very bad time to delay the appointment of judicial nominees. Our Federal courts are in crisis. The U.S. courts of appeals are currently 15 percent vacant, even as case filings in those courts reached an all-time high in 2002. Chief Justice Rehnquist has warned that this high vacancy level, coupled with the rising caseload, threatens the proper functioning of the Federal courts.

Currently, there are 14 courts of appeals pending nominees, 12 of whom were nominated in 2001 and have been waiting for over a year for a vote in the Senate. The most egregious example is the Sixth Circuit, which includes Ohio, where 6 of the 16 seats are open and classified as judicial emergencies. Of these six vacancies, two, Jeff Sutton and Deborah Cook, have been pending since May 2001, nearly 2 years, and three others have been pending since November 2001, over 2 years. The fact is, we do have a crisis in the judiciary in the United States of America.

Now, let's look at the record. When Senator HATCH was chairman during the Clinton administration, he considered more than one circuit nominee at 11 different hearings. But not once during the 107th Congress did the Democrats hold a hearing on more than one circuit court nominee at a time. The result is we fell behind in the confirmation of circuit nominees.

Presidents Clinton, Reagan and the former President Bush all received confirmations for their first 11 circuit nominees well within 1 year of the nominations. This is in stark contrast with the treatment afforded to President George W. Bush. Only 3 of his first 11 circuit nominees were confirmed within 1 year of their nomination. And only 5—fewer than half—were confirmed during the entire 107th Congress. That's terrible.

My friend Senator HATCH is an extraordinary man. After so much repetition of the same arguments, I'm amazed that he can even stand up.

As Senator HATCH has highlighted in the past, during Democrat control of the Senate in 2001–2002, only 17 Bush circuit court nominees reached the floor for votes. In three of the cases in which they did go to the floor—the nominations of Julia Smith Gibbons, Richard B. Clifton, and Lavenski R. Smith—cloture motions were filed and the motions easily carried.

However, and this is very important, none of those cloture votes was in response to a genuine effort to filibuster a nominee. Rather, cloture petitions were filed as a Senate time-management device.

If the Estrada nomination is permanently blocked by a filibuster, the political baseline shifts forever.

To understand just how extraordinary the current situation is, one only needs to examine the Senate's record of judicial confirmations. The first filibuster of a judicial nominee that resulted in a cloture vote was in 1968. Since then, the Senate has confirmed approximately 1,600 judicial nominations—the vast majority of these, nearly 1,500, occurred without even a roll call vote, as most are confirmed by unanimous consent.

Indeed, of those 1,600 judicial nominations confirmed by the Senate since 1968, only 14 were subject to a cloture vote. And with the exception of the bipartisan 1968 filibuster of Abe Fortas' nomination to be Chief Justice of the United States, the Senate has never blocked by filibuster a judicial nominee to any court—Never.

The rejection of Abe Fortas to serve as Chief Justice of the United States marked the first and only time the Senate has rejected a President's judicial nominee by way of a filibuster. Yet Miguel Estrada presents none of the concerns that caused a bipartisan coalition of Senators to block Justice Fortas' elevation to chief justice.

Given the Senate's historical unwillingness to filibuster nominees—even Supreme Court nominees—it is not surprising that the Senate has never blocked by filibuster a nominee to any lower court. Furthermore, the Senate has never blocked—by a partisan filibuster—any judicial nominee. As I noted, the only rejection-by-filibuster was the case of Justice Fortas, which was bipartisan. There is no precedent in the Senate of a filibuster conducted solely by one Party to deny the President his judicial nominee.

The stakes here are much greater than the fate of a single judicial nominee. At issue is whether the Senate should reinterpret its constitutional advise and consent obligation to require 60 rather than 51 votes to confirm a judicial nominee. This is a position the Senate has never taken in the context of lower court nominees, and one which Republicans have avoided.

To adopt a new standard would fundamentally alter the balance of power between the administration and the Senate in the judicial confirmation process. It also would seriously erode the comity that has existed between the two branches in the past.

In effect, we're playing games with the administration of justice, acting without regard for the problems of the Judiciary. If Senators filibuster Mr. Estrada's nomination to the DC Circuit, and if that filibuster results in the rejection of the nomination, Democrats will have forced a permanent change to the political and constitutional landscape. This in essence, would create a completely new process and would, in effect, allow Senators to deny any judicial nominee their right to a vote.

Due to the numerous delays in the Estrada vote, the crisis in the Federal courts continues and the Senate can't attend to our pressing legislative business. Our country has serious problems today and they require serious and thoughtful consideration in the Senate. The stalling games that are being played here are really hurting the judicial process and to a larger and greater extent the Nation itself.

While we wait for the minority to make up its mind, we cannot accomplish any meaningful debate on the country's pressing problems. These are hard times for Americans and my constituents ask me: Do you guys in Washington get it? Do you get it? Do you understand what is going on?

We are involved in a war on terrorism abroad and at home. The economy is sputtering. The President of the United States has more on his plate than perhaps any President in my memory. Some say he has more on his plate than FDR, some say Abraham Lincoln. Our constituents believe we are behaving like Nero, fiddling around while Rome was burning. They continue to ask, don't you get it? Is the Emperor wearing any clothes?

All of us in this body have priority concerns, yet during this stalemate, no one's legislation is moving ahead. Consideration of urgent matters that I would like to be addressed, such as prescription drugs/Medicare reform, medical lawsuit abuse reform, asbestos litigation reform, human capital, the energy bill at a time when the cost of natural gas is skyrocketing, or the accelerating deficit.

I know I am not the only Senator who is concerned about these issues and I know some of my colleagues have other priority concerns. At present, no one is winning anything by this stalemate and the important concerns of the American people are being held hostage.

This is bigger than a delayed vote on Miguel Estrada. As U.S. Senators we need to act like adults. We need to come together and create a unanimous consent agreement on how we will handle the approval of judges from now on. We have to find a way to reach agreement.

If my colleagues on the other side of the aisle persist in opposing Mr. Estrada, they will have a hard time explaining to their constituents why they voted against him since he has met, and I dare say surpassed, the ''gold standard'' they asked for by the American Bar Association. They also would be hard-pressed to explain why his nomination has been held up for so long without a vote.

I've been receiving letters from my constituents who think the U.S. Senate is holding up this vote because Mr. Estrada is Hispanic. My Hispanic constituents think he is being used as the whipping boy and they are furious. I don't think some of my colleagues realize what this means to a minority community. In Ohio, I appointed Jose Feliciano as the first Hispanic police commissioner because he was the best candidate, but the Hispanic community was very proud and excited. The Hispanic community was so proud that one of their boys made it. Can you think of what an impact it had on the young people that a Hispanic made it to be the police commissioner.

I remember when I appointed Ken Blackwell to be the treasurer of the State of Ohio, the first African American to serve as the treasurer of the State of Ohio, a constitutional office, and how much it meant to African Americans in our State that someone could hold a constitutional office. They had an inspiration. I came up during the years of Carl Stokes, the first African American mayor of the city of Cleveland, and I remember the impact it had on young people in Cleveland and all over America that an African American could be a mayor of a major city. I remember Frank Lousche, who was the mayor and Governor of the State of Ohio, and Senator, who was a Slovenian—when I was 12 years old, how much it meant to me to see Frank Lousche, Slovenian, get to be mayor, and then Governor. By that time he wasn't even a Senator. But it inspired me and other people of my nationality to say if he can do it, I can do it.

There is more to it here. In this case I think my colleagues should understand, particularly my colleagues on the other side of the aisle, this is a good man. He has the qualifications. There is not any reason why we should not allow a vote on this particularly wonderful human being who will make a difference if he has a chance to serve on the bench here in the DC District.

In addition to that, it will mean so much to Hispanics all over the United States that one of our boys made it.

The PRESIDING OFFICER. Under the previous order, the Senator from Oklahoma has 5 minutes.

Mr. INHOFE. Mr. President, I can relate to the remarks of the Senator from Ohio. He and I had the honor of sharing the same position of mayor of a major city. It happens I started—maybe you did—the first Hispanic commissioner in the city of Tulsa. We had a sister city in Mexico, Ciudad de San Luis Potosi. They would come up there once a year for this big exchange program. I can remember standing there in front of all of our citizens, our Hispanic citizens of Tulsa, saying: Como Acalde de la ciudad de Tulsa, yo quiero decir Bien venidos, bien venidos a la ciudad. Creemos la Ciudad de San Luis Potosi es la ciudad mas hermosa de todas las ciudades del mundo.

Their faces shined and they realized we were participating in their culture and they in ours. They asked me the question last week, and I asked the distinguished Senator from Utah, What do we say to them when we go back and talk to them? Why won't they give us a chance, give one Hispanic a chance at a high office?

They asked me that question and I did not have a very good answer for

them. But they said, You know, there are a lot of us out here who really do care. They said, Why don't you kind of visit with us a little bit.

Muchos Hispanos estan eschuchando ahora. . . Y Yo Quiero Decir.

Por desgŕacia, hay personas en el seńado que no quieren escuchar a ni una palabra de la verdad.

Yo invito a la comunidad hispana para llamar a sus senadores para insistir en los derechos de Miguel Estrada y en la confirmación de Miguel Estrada como juez.

Llame los senadores, todos los senadores, especialmente los senadores, de los estados de CA, FL, NY, LA, AR y NM. Llame ahora y pregúntalos, <<Porque no les gusta hispanos?>> Es su misión. Llame ahora! Los Estados Unidos necesitan un hispano . . . y eso hispano es Miguel Estrada.

Vaya, vaya a llamar imediamente. Los hispanos quien estan escuchando ahora pueden hacer la diferencia.

Gracias Mis Amigos.

I yield the floor.

The PRESIDING OFFICER (Mr. WARNER). Under the previous order, the Senator from Utah has the floor.

Mr. HATCH. Mr. President, I have been here 27 years. I have been on the Judiciary Committee 27 years. I have literally seen 1,500, 1,600 judges confirmed—most all of them without even a debate, just by unanimous consent. I have seen very few judges given a rough time and hardly anybody given the rough time that Miguel Estrada is being given here on the floor. I have never seen anybody in the history of the Senate—in all of my studies of the history the Senate—filibuster a circuit court of appeals nominee—never, not once. I have never seen even where there have been cloture votes for management purposes or whatever else—certainly not a filibuster purpose—I have never seen a circuit court of appeals nominee pulled down because of a filibuster—never.

Why this double standard? Why is Miguel Estrada, with all his credentials—and on the other side of the aisle they admit he has exceptional credentials, including their gold standard, the American Bar Association's most well qualified standard, the highest rating anybody can possibly have—why is it that this double standard is being used against this Hispanic nominee to one of the most important courts in the country, this Hispanic nominee who is by all intents and purposes and by all measure the embodiment of the American dream?

Mr. FRIST. Mr. President, will the Senator yield for a question?

Mr. HATCH. I would be delighted to without losing my right to the floor.

Mr. FRIST. Is the Senator from Utah aware of any argument against the confirmation of Mr. Estrada that he does not have the academic credentials to suggest that he will be a fine judge?

Mr. HATCH. Of course not. They could not. Mr. Estrada graduated magna cum laude from Columbia University after coming from Honduras. He was 4 years old when his parents divorced in Honduras. He was 17 when he came to this country, speaking very little English. He taught himself English. He graduated magna cum laude from Columbia University, and then he graduated magna cum laude from Harvard where he was an editor of the Law Review—one of the highest positions you could have in the law school. Of course not. There is no way they can say he doesn't have the academic credentials to do this job.

Mr. FRIST. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. FRIST. Mr. President, the Senator from Utah has been reviewing the records of judicial nominees for 27 years. Does the Senator know of many lawyers who have argued 15 cases before the Supreme Court, as has Mr. Estrada?

Mr. HATCH. Of course not. Few lawyers have. Few nominees for judgeships have in the history of this country. That is what makes me so livid—to see lesser legal minds writing partisan letters suggesting he is not a qualified nominee. It drives me nuts, to be honest with you. Few lawyers in America have argued 1 case before the Supreme Court, let alone 15.

By the way, Miguel Estrada has a handicap. He has a disability. He has a speech impediment. Yet he has risen to the top of the legal profession in appellate advocacy and oral advocacy with a speech impediment. Nobody can match that.

Mr. FRIST. Mr. President, will the chairman of the Judiciary Committee yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. FRIST. We know in fact that the American Bar Association has given Mr. Estrada its highest rating—in fact, unanimously well qualified. Does the Senator know if the Senate has ever obstructed a vote on any nominee recommended to the Senate by the Judiciary Committee who has received an ABA rating of unanimously well qualified?

Mr. HATCH. I do not recall anyone who has had this difficulty—in fact, anyone with that type of a rating who has not gone through the Senate once reported by the Judiciary Committee, and the fact that the Democrats are doing this now is outrageous.

Mr. FRIST. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. FRIST. Will the Senator agree that the opposition mounted against Mr. Estrada is not about his qualifications?

Mr. HATCH. No. How could it be?

Mr. FRIST. If the Senator will yield for a question——

Mr. HATCH. Without losing my right to the floor.

Mr. FRIST. Is the Senator aware that it has been suggested a double standard is being applied to this nominee with requests being made that have never been applied to any other nominee? Does the Senator have any explanation for this?

Mr. HATCH. I agree with the distinguished majority leader that there is a double standard being applied to Miguel Estrada. I don't want to particularly conjecture at this point as to the motive. But a double standard is generally being applied, and it is not fair.

Mr. FRIST. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. FRIST. The chairman of the Judiciary Committee is a constitutional law scholar and knows the rules and the practices of the Senate. My question is, Has he ever seen a filibuster used against an appellate court nominee?

Mr. HATCH. Not a true filibuster. There have been cloture votes as a Senate management device but not a true filibuster. There has never been a true filibuster used against a circuit court of appeals nominee, no, and certainly not against a circuit court of appeals nominee to the Circuit Court of Appeals for the District of Columbia.

Mr. FRIST. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. FRIST. Does the Senator from Utah share my concern that what they are doing in filibustering Miguel Estrada is harmful to the institution of the Senate and its advise and consent responsibilities?

Mr. HATCH. I have never been more concerned. We are in danger of actually breaking the system. We are in danger of doing lasting harm to the Senate, its procedures, and to the President of the United States, and to the judiciary; to the executive branch because, if this filibuster goes through, that means that on controversial nominees—and my colleagues on the other side treated all of the Bush circuit court nominees as controversial—that means you have to have 60 votes. That would apply to both sides of the floor should they get the Presidency. It is a very dangerous thing and something we just definitely should not allow to come to fruition.

Mr. FRIST. Will the Senator yield for one last question?

Mr. HATCH. Without losing my right to the floor.

Mr. FRIST. Mr. President, the Washington Post has repeatedly and emphatically called on the Democratic leadership to stop these demands for confidential memoranda. I was wondering if the Senator had seen the Washington Post editorial from last September that said, ''Seeking Mr. Estrada's work product as a government lawyer is beyond any reasonable inquiry into what sort of judge he would be. Nor is it fair to reject someone as a judge because that person's decision to practice law rather than write

articles or engage in politics makes his views more opaque.''

Does the Senator agree that these demands go beyond any reasonable inquiry and are instead a gimmick and an attempt to prevent this nominee from ever getting a vote?

Mr. HATCH. Absolutely. The tactic is to demand documents that they know the administration cannot give because the precedent would be so earthshaking because these are privileged documents, and then filibustering and claiming they are filibustering because they can't get the documents. And when they don't get them—it is just typical of what they have been doing—they flaunt what really is proper procedure.

Then they have not only asked for documents but his record, Miguel Estrada's recommendations while at the Solicitor General's Office for appeals, certiorari matters, and amicus curiae matters.

Never in the history of this country has anyone given those documents out of the executive branch to the Senate or to anybody else. And they should not, because it would deter and affect and, in many respects, destroy the work of the Solicitor General, the attorney for the people of this country.

Mr. DEWINE. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. DEWINE. It is my understanding there is substantial opportunity, following hearings, to submit followup questions in writing. I wonder if the Senator from Utah would tell me whether that is correct or not.

Mr. HATCH. Absolutely. Not only did they hold one of the longest hearings in history for a circuit court appeals nominee—conducted by them, which they said was fair, where they had the privilege of asking every question they wanted or even extending the hearings if they did not believe they got answers to those questions—but afterwards they had a right to submit written questions.

And, by the way, only two people did, the distinguished Senator from Illinois and the distinguished Senator from Massachusetts, Mr. DURBIN and Mr. KENNEDY.

By the way, I do not believe Senator DURBIN was even there during the hearings to ask questions. And yet I have seen, time after time, the distinguished Senator from Illinois take the floor and talk about the nonanswers that were supposedly given.

I refer all of my colleagues to the speech made earlier by the distinguished Senator from Tennessee Senator ALEXANDER. He blew that contention that Miguel Estrada did not answer these questions into oblivion. I recommend everybody in this country read that speech because he actually showed the A-plus answers that Miguel Estrada gave to Democrat and Republican questions. And they were thorough. They were answers that would make anybody proud. They were answers that any judicial nominee would be proud to do. And, frankly, he answered them better than almost any judicial nominees I have seen in the last 27 years.

Mr. DEWINE. Mr. President, will the Senator from Utah yield for an additional question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. DEWINE. So would the Senator from Utah agree, if a Senator thought that he or she did not have enough information at the hearing about Mr. Estrada, or had additional questions that he or she wanted to have answered, they could have submitted additional questions?

Mr. HATCH. No question about it. They were given the right to submit additional written questions, and only two Senators did.

By the way, the administration has even gone further than that. They said: Look, we will present Miguel Estrada to any Democrat Senator who wants to ask him questions in their personal office on a personal basis. They have gone to great lengths for this wonderful nominee.

Why is it—I ask my distinguished friend and all others who are listening—that this Hispanic nominee is being given the business like he is? Why is it that we have this double standard? It is one of the most difficult things for me to see. It is one of the most difficult things to understand.

Mr. DEWINE. Mr. President, I say to my distinguished colleague from Utah, I wonder if you would yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. DEWINE. I want to make sure I understand. I ask my colleague whether or not Mr. Estrada did, in fact, answer the questions?

Mr. HATCH. He answered the questions. Now, he may not have answered them the way some of my colleagues wanted him to. It was apparent they were trying to get him ensnarled. It reminds me of the Biblical days when the pharisees would try to ensnarl Jesus Christ. They would ask these questions, trying to ensnarl Him and make Him look ridiculous in front of the people.

It was almost that bad in committee. He answered every question. Unfortunately, for them, he answered them precisely the way most Democrat nominees did; and that is, instead of going into how he would rule on matters that would come before him later in the court, he basically said: I will obey the law. I will sustain the law. I will follow the law regardless of my own personal views.

That is what the Democrat nominees have said. And that is a correct answer. And it is a very good answer. His answers were more literate, more scholarly, more persuasive, in many of the questions that were asked than I have seen in most nominees.

Again, I ask, why the double standard in this case? Why don't we recognize how great this young man is and allow him the same privileges that we have given to countless Democrats during the Clinton years when we confirmed 377 Clinton nominees to the Federal court—the second all-time highest confirmation rate in history, only 5 below the highest, and that was Ronald Reagan, who had 382?

Mr. DEWINE. Mr. President, will my distinguished colleague from Utah yield for an additional question?

Mr. HATCH. Without losing my right to the floor.

Mr. DEWINE. It is my understanding that the ABA conducted its own very thorough investigation of Mr. Estrada before they decided to give him their highest possible rating, well qualified.

Could the Senator from Utah tell me whether or not that is correct?

Mr. HATCH. That is correct.

Mr. DEWINE. Mr. President, I wonder if my colleague will yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. DEWINE. Now, the ABA has expressly stated it does not evaluate a nominee's ideology because it ''restricts its evaluation to issues bearing on professional qualifications.'' But the ABA does investigate a nominee's openmindedness and freedom from bias.

Could the Senator from Utah tell me whether it seems unreasonable to believe that the ABA would have unanimously given Mr. Estrada its highest rating if it thought he would use his judicial role to advance his personal ideology?

Mr. HATCH. There is no way they would have, no way in this world. In fact, there are plenty of Democrats, and I might add, partisan Democrats, who do not act in a partisan way—and neither do the Republicans—on that standing committee. In fact, if I recall it correctly, there are more Democrats on the committee than Republicans. And they all unanimously gave Miguel Estrada the highest rating that the American Bar Association can possibly give.

Keep in mind, my colleagues on the other side of the floor said that the American Bar Association rating is the gold standard, it is the thing that makes the difference as to why they will vote for people. And ''qualified'' is normally enough to vote for anybody. Here is a man who has been rated unanimously ''well qualified'' by both Democrats and Republicans on the standing committee, who I think are doing a good job on that committee.

I have been critical of the committee in the past, but I think during the last few years of the Clinton administration, and up to today, that they have been doing a good job.

Mr. DEWINE. Mr. President, I wonder if my distinguished colleague will yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. DEWINE. Can the Senator from Utah tell me whether I am correct in understanding that, despite the assurances of those who have worked with Mr. Estrada, and the unanimous affirmation of the ABA, some of our colleagues continue to be unconvinced that Mr. Estrada would be an unbiased interpreter of the law?

Mr. HATCH. I do not see how any colleague could remain unconvinced of that. He will be. He will follow the law. He has said he will follow the law. He said he would uphold precedent. He said he would do what is right regardless of his own personal beliefs.

That is all you can ask of any of these nominees. And he has answered those questions absolutely accurately, the way the Clinton nominees answered those questions.

Why—again, might I ask—is there a double standard with regard to this Hispanic nominee? Why is there? I cannot see any reason for it.

Mr. DEWINE. Mr. President, I wonder if my colleague will yield for one additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. DEWINE. I have really tried to understand where some of our colleagues are coming from with their adamant opposition to this extraordinarily well-qualified nominee. The most common criticism has been that there is some concern about whether they know what his personal views are.

I wonder if the Senator from Utah could address that and perhaps remind us again of what Mr. Estrada's supervisors at the U.S. Solicitor General's Office have said about Mr. Estrada's ability to separate his personal views from his analysis of the law.

Mr. HATCH. Well, he worked for both the Clinton administration and a Republican administration. And he got the highest raves and performance evaluations by both administrations, meaning that he worked in a bipartisan way with both administrations. Unfortunately, in order to create a red herring issue that they can hide behind, our colleagues on the other side have demanded his recommendations while at the Solicitor General's Office—the attorney for the U.S.A., for us citizens, the private, privileged memoranda, his recommendations on appeals on matters involving certiorari and on matters involving amicus curiae. There has never been such a move. To my knowledge, the Justice Department, the Solicitor General's Office has never—nor will it ever—give up those documents because they are privileged executive branch documents.

I cannot help but believe our colleagues on the other side know as much about that as I do. They know that is absolutely accurate, and I am just suggesting this is a red herring issue so that they can hold up this nominee with a filibuster, of all things—the first in history.

Let me just go further on that because it is a very important issue, the only issue they seem to have. I hate to say it, but some of our friends in the media ignore the fact that the seven living former Solicitors General wrote a letter to Chairman LEAHY that says this:

We write to express our concerns about your present request that the Department of Justice turn over appeal recommendations, certiorari recommendations, and amicus recommendations that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of—

By the way, of these seven former Solicitors General—the only living ones—four of them, or better than 50 percent, are Democrats. Three he worked for. They said:

As former heads of the Office of the Solicitor General under Presidents of both parties, we can attest to the vital importance of candor and confidentiality of the Solicitor's decisionmaking process.

I will read a couple other thoughts here:

It goes without saying that when we made these and other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas, an exchange that simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure.

High-level decisionmaking requires candor, and candor, in turn, requires confidentiality.

Remember, four of these seven are Democrats. The other three are Republicans. All of them are together in this, though.

Any attempt to intrude into the office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States litigation interest, a cost that also would be borne by Congress itself. Although we proudly respect the Senate's duty to evaluate Mr. Estrada's fitness for the Federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

This is signed by Seth B. Waxman, on behalf of himself, Walter Dellinger, Drew Days—three Democrats—Kenneth Starr, Charles Fried, and Robert H. Bork, all Republicans, and Archibald Cox, of course, a Democrat—four Democrats and three Republicans. That speaks for itself. I hope it puts to bed this phony red herring argument that has been lodged by the other side. It is phony, wrong, and should not be given the time of day. I call on the media to start being responsible with regard to these matters.

Mr. CRAIG. Mr. President, will the chairman of the Judiciary Committee yield for a question?

Mr. HATCH. I will, without losing my right to the floor.

Mr. CRAIG. Mr. President, the Chicago Tribune has strongly condemned the filibuster the chairman is speaking to tonight. So has the Chicago Sun-Times. Those papers don't agree on a lot of things, but one thing they are now agreeing on is that a filibuster is a bad idea. The Tribune said, regarding this confidential memo request that you have just referred to:

Anyone who wants a glimpse into Estrada's thinking can scrutinize the briefs he wrote and the oral arguments he made.

The Sun-Times wrote:

Our legal system cannot and must not be held hostage to political nitpicking.

It agrees with President Bush that this would be a shameful event.

Now, I know the Senator from Illinois is not in the Chamber now, but as you referenced him a moment ago, he has been in the Chamber quite often demanding these briefs be turned over. You are the chairman of the committee. At the time you were the ranking member and were there—I was not, as I am a new member of the Judiciary Committee. I was not there during the core investigation and questioning of Miguel Estrada. Can you tell me if the Senator from Illinois was there and if he asked any questions at the time? He seems not to know about this man.

Mr. HATCH. My recollection is that he was not at the hearing and he didn't ask any questions. He and every Democrat had a right to do it, and it went all day long. Yet the Senator seems to be trying to give the impression that he knows everything that went on at the hearings. True, he could have read the transcript, but he had every chance to ask questions. Why wasn't he there? Why didn't he ask the questions? Why is he in the Chamber criticizing Miguel Estrada and criticizing the process and using this phony excuse with regard to the confidential, privileged memoranda of the Justice Department along with his colleagues?

I don't blame any one person. They are all to blame for using these kinds of phony arguments. I think the media is to blame—some of them. I have 57 different editorials, 50 of which are for Mr. Estrada.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Not just yet. You mentioned the Chicago Sun-Times. My staff just gave me that. You know, it is interesting—I will quote a couple lines.

Who can look at the spectacle of the 108th Congress and not believe that justice and the basic operation of the Nation is being sacrificed on the altar of ugly obstructionist, partisan politics?

That is the Chicago Sun-Times, which is not known as a conservative newspaper, to my knowledge.

Let me give one other. I am quoting a couple sentences. I will put the whole editorial into the RECORD, if I can. I ask unanimous consent that this be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Chicago Sun-Times, Feb. 14, 2003]

WHEELS OF JUSTICE CAUGHT IN WASHINGTON GRIDLOCK, AGAIN

''The time has come for the U.S. Senate to stop playing politics with the American judicial system. So bad has the situation become that some Americans wonder whether justice is being hindered. . . '' So began an editorial on this page five years ago, during the now-distant days of the Clinton administration, when Senate Republicans were stonewalling judicial nominees from a Democratic president.

We mention it because the party in power tends to scream about efficient government, while the party out of power complains about failure to follow procedure. To quote Shakespeare, ''A plague on both their houses.'' The only update we'd make in the opening quote is to change ''some Americans'' into ''many Americans'' or even ''most Americans.'' For who can look at the spectacle of the 108th Congress and not believe that both justice and the basic operation of the nation is being sacrificed on the altar of ugly, obstructionist, partisan politics?

After dragging their feet on shifting committee chairmanships and the routine operations of the nation's business, Senate Democrats, though in a minority, are threatening to filibuster over the confirmation of Miguel Estrada, a Washington lawyer who seems eminently qualified for the federal appeals bench in every way except for his alacrity to answer questions about his opinions on legal matters that have not yet been presented to him, such as the issue of abortion.

The entire idea behind disabling the business of the nation is so that the blame for whatever bad situation we find ourselves in come election 2004 can be laid at the feet of the Republicans, since they are in power. But the Democrats forget that, if they manager to torpedo the Republican agenda, then the republicans are not really fully in power, and whatever problems are certain to come are the fault of both parties. And obstructionism hurt Democrats in last November's voting.

President Bush called the Democratic approach ''shameful politics.'' We are not revealing a bias when we agree—the nation needs good judges, from both parties, of both conservative and liberal outlooks. Our legal system cannot and must not be held hostage to political nitpicking. Estrada deserves to be the first Hispanic on the U.S. Court of Appeals for the District of Columbia,and if his nomination in some way helps to break the political deadlock keeping critical judgeships from being filled, that will be just another accomplishment to add to his record.

Mr. HATCH. ''Our legal system could not and cannot be held hostage to the political nitpicking''—which is exactly what is going on here. I admit that my distinguished colleague from Illinois did take the time to submit questions. None of the others did, except Senator KENNEDY. All of them are complaining that he didn't answer the questions. I will say that my friend and colleague from Illinois did take the time to submit written questions. He deserves credit for that. But as far as I know, I don't believe he asked any questions at the hearing.

Mr. CRAIG. Mr. President, will the Senator yield further for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. CRAIG. I know the Senator is now in the Chamber. I have referenced these two articles. Those papers have condemned the filibuster, and they have condemned the strategy being used here to try to pry well beyond the oral arguments and briefs of Mr. Estrada.

I want to also ask, was the Senator also aware that the Freeport Journal-Standard, the oldest news source in northwest Illinois, has editorialized that this demand for Solicitor General memos would do serious damage to the ability of any member of the Justice Department to participate in its deliberative process, and that the same paper concluded Democrats are free to vote against him if they want, but vote they must; to do otherwise is an outrageous abuse of power.

The question then: Was the Senator aware that this story had reached our heartland and that now newspapers all over America are reacting? And was he aware that they are speaking to this kind of injustice?

Mr. HATCH. I am. Many editorials are complaining and pointing out that this is terrible politics. It is a terrible thing to do. It is a double standard. You quoted the Freeport Journal-Standard. Let me quote one paragraph:

If there is one example today of the worst in American politics, it is the decision by Senate Democrats to filibuster the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia. President Bush's description of the move as ''shameful politics'' is generous. It is a downright repugnant abuse of the Constitution.

The rest of the editorial is good as well. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Freeport Journal Standard, Feb. 20, 2003]

SENATE DEMS SHOWING WORST SIDE OF POLITICS

The issue: Judicial nominations.

Our view: For Senate Democrats to filibuster the nomination of Miguel Estrada is an outrageous abuse of power.

If there is one example today of the worst in American politics, it is the decision by Senate Democrats to filibuster the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia. President Bush's description of the move as ''shameful politics'' is generous. It is a downright repugnant abuse of the Constitution.

The chief reasons Democrats give is Estrada, an American success story who went from Honduran immigrant to graduating Harvard magna cum laude to Supreme Court clerk and beyond, is a ''stealth conservative,'' whatever that means. They say his responses to questions at committee hearings on his nomination did not sufficiently reveal his political opinions and demand that confidential memoranda written by Estrada when he was an assistant solicitor general be turned over. This is unprecedented, and if allowed, would do serious damage to the ability of any member of the Justice Department to participate in its deliberative processes.

Clearly, Democrats are fearful of conservative jurists. But for eight years, Bill Clinton nominated liberal jurists to the bench, including three Supreme Court justices. This is called democracy. The proper recourse is not to bottle up every nomination on the basis of some asinine political litmus test, but to win the presidency. If this continues, we can expect Republicans to use the same tactic and the result will strangle our justice system.

The Senate has a Constitutional duty to vote on the president's judicial nominees. By all accounts, Estrada is a brilliant scholar, distinguished public servant and outstanding lawyer, rated by the American Bar Association as ''highly qualified.''

Democrats are free to vote against him if they want, but vote they must. To do otherwise is an outrageous abuse of power.

Mr. CRAIG. Mr. President, I thank the chairman for yielding for questions.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. I will be happy to yield for a question without losing my right to the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. I would like to ask the Senator—I was off the floor in the cloakroom—it is my understanding my name was raised during the course of the debate.

Mr. HATCH. It was raised in a question to me.

Mr. DURBIN. I thank the Senator. I ask the Senator, is he aware of the fact that I was present for the questioning of Miguel Estrada? I came to the hearing room on several occasions and, unfortunately, because of the timing of the schedule, I was never called for questions and forced to go to other committee hearings and submitted written questions to Miguel Estrada?

Mr. HATCH. I will take the Senator's word on that. There is no question the distinguished Senator did submit written questions which were answered, but I also answer the Senator that this hearing went on all day. It was an extraordinarily long hearing, and if the Senator had any questions that he wanted to ask, I think it was his duty and his obligation to get there and ask them, by the way, because we can all find time during the complete day's hearing to come to the committee.

I am not trying to find fault. What I am saying is that it is one thing to be able to speak from personal experience of having been there and asked questions; it is another thing to continually come to the floor and berate Mr. Estrada for not answering questions when, if you refer to the remarks of the distinguished junior Senator from Tennessee earlier this evening, that just is not true. The fact is, he answered the questions.

Mr. DURBIN. Will the Senator yield for another question?

Mr. HATCH. I will say this—and I compliment my dear colleague from Illinois—my colleague from Illinois did submit written questions, but there were answers to those written questions as well. I have to say, my colleague from Illinois was 1 of 2 out of 9 Democrats—actually 10 at the time—who submitted questions. All of a sudden to come here with crocodile tears——

Mr. DURBIN. Will the Senator yield for another question?

Mr. HATCH. Let me finish my remarks and, of course, I will. But to come here with crocodile tears and tell us that he just did not do enough and he did not answer the questions when he did, in fact, do so, and to misrepresent, as some have done—I am not saying the distinguished Senator from Illinois because I have not heard all of his remarks; people will have to judge that for themselves. But to come here and make those kinds of accusations when this man had one of the longest hearings, answered many more questions than almost any Clinton circuit court of appeals nominee had to answer when I was chairman, and to act like he does not deserve to have an up-or-down vote on the Senate floor, which we gave to every Clinton nominee, I think is a little bit beyond the pale, and I think that is what has been happening around here.

Personally, I resent it, on behalf of the United States of America and on behalf of this Hispanic nominee who has all of these qualifications which I believe even the Senator from Illinois has acknowledged.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. During the course of the hearing on Miguel Estrada, we usually have rounds where Senators ask questions. Does the Senator from Utah recall the length of the rounds of the questions that each Senator could ask of Miguel Estrada?

Mr. HATCH. I recall that they were lengthy, and I recall that Senator SCHUMER from New York chaired the hearing. I did not chair the hearing. He could have set up any kind of rounds he wanted to, and, as I understand it, everybody had a full opportunity to ask the questions they wanted, both Democrats and Republicans.

Mr. DURBIN. If the Senator will allow me to ask a question——

Mr. HATCH. If I can just continue, the Senator himself said Mr. Estrada has not answered any questions, and the Senator from Illinois at least implied that from time to time.

Mr. DURBIN. Since my name has been brought up in debate—it becomes a debate over the Senator from Illinois rather than Estrada—I hope the Senator from Utah will give me a chance to respond.

Mr. HATCH. Mr. President——

The PRESIDING OFFICER. The Senator from Utah has the floor and the Chair requests that the Senator from Illinois address his questions to the Chair.

Mr. HATCH. I am not accusing my colleague from Illinois of anything other than based upon whatever he said on the floor.

Mr. DURBIN. Will the Senator allow me to ask a question?

Mr. HATCH. What I do want to make clear is I believe the distinguished Senator from Illinois and others have been saying that Mr. Estrada did not answer the questions. Let me recall, in case it might have slipped the mind of the distinguished Senator, ''Follow-up Questions for Miguel Estrada, Senator Richard J. Durbin, Senate Judiciary Committee.'' Let me read a few of these.

One:

During your nominations hearing, Senator Edwards asked whether you consider yourself a ''strict constructionist'' when it comes to interpreting the Constitution. You described yourself instead as a ''fair constructionist.'' How do you distinguish these two concepts? In what ways are they similar? In what ways are they different?

That is an intelligent question. I commend my colleague.

Mr. DURBIN. I thank the Senator.

Mr. HATCH. The response:

I do not believe that a legal text, such as the Constitution, should be construed ''strictly'' (i.e., grudgingly) or ''loosely'' (i.e., without careful regard to the text's language so as to achieve a meaning beyond that which the text will fairly bear). In my view, the Constitution, like other legal texts, should be construed reasonably and fairly, to give effect to all that its text contains. Although the phrase ''strict construction'' is often used to reflect a legal philosophy that simply gives appropriate consideration to the text of the Constitution, the phrase is also sometimes used in a pejorative fashion to describe an approach to interpretation that does not fairly reflect the meaning that the words, history, and background of the text will fairly bear. For that reason, I avoided using that phrase in response to Senator Edwards' question.

The distinguished Senator from Illinois asked if the current members of the Supreme Court—this is written because he did not ask oral questions during the hearing:

Of the current members of the Supreme Court, who would you characterize as a strict constructionist? Who would you characterize as a fair constructionist? How would you characterize the remaining Justices?

Response:

Although the current members of the United States Supreme Court sometimes emphasize different interpretive tools—giving, for example, greater or less prominence to text, history or precedent in a particular case—I believe each of them attempts in good faith to give a fair reading to the constitutional provisions that come before the Court. For that reason, I would characterize each member of the current Court as a ''fair constructionist.''

The question again from the distinguished Senator from Illinois:

In terms of judicial philosophy, please name several judges, living or dead, whom you admire and would like to emulate on the bench.

This is what Mr. Estrada responded:

There is no judge, living or dead, whom I would seek to emulate on the bench, whether in terms of judicial philosophy or otherwise. If I am fortunate enough to be confirmed, I hope to seek aid from whatever legal materials may shed light on the problem before me, and thus to reach the correct answer to that problem to the best of my abilities, without any preconception about how some other judge might approach the question.

I have been fortunate to know several great judges and justices in my lifetime. I admire Judge Amalya Kearse and Justice Anthony Kennedy, for whom I was a law clerk. During my time as a law clerk for Justice Kennedy, I also got to work with retired Justice Lewis F. Powell, Jr., for whom I developed a great deal of affection and admiration.

Amalya Kearse was a Carter appointee to the Second Circuit Court of Appeals. In other words, this man has admired a Democratic judge. Anthony Kennedy is, of course, considered a moderate conservative on the Supreme Court. He served him as a clerk, and admires him. Then he admires Lewis F. Powell, Jr., who is considered one of the leading moderate judges during his lifetime on the Court.

I could read all of these questions and answers, and I think any fair person would say he gave some very good answers that would pass almost any professorial, jurisprudential, legal, or other analysts' reviews.

I ask unanimous consent that the followup questions for Miguel Estrada by Senator RICHARD J. DURBIN and his answers be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FOLLOW-UP QUESTIONS FOR MIGUEL ESTRADA FROM SENATOR RICHARD J. DURBIN, SENATE JUDICIARY COMMITTEE

(1) During your nominations hearing, Senator Edwards asked whether you consider yourself a ''strict constructionist'' when it comes to interpreting the Constitution. You described yourself instead as a ''fair constructionist.''

(a) How do you distinguish these two concepts? In what ways are they similar? In what ways are they different?

Response: I do not believe that a legal text, such as the Constitution, should be construed ''strictly'' (i.e., grudgingly) or ''loosely'' (i.e., without careful regard to the text's language so as to achieve a meaning beyond that which the text will fairly bear). In my view, the Constitution, like other legal texts, should be construed reasonably and fairly, to give effect to all that its text contains. Although the phrase ''strict construction'' is often used to reflect a legal philosophy that simply gives appropriate consideration to the text of the Constitution, the phrase is also sometimes used in a pejorative fashion to describe an approach to interpretation that does not fairly reflect the meaning that the words, history and background of the text will fairly bear. For that reason, I avoided using that phrase in response to Senator Edwards' question.

(b) Of the current members of the Supreme Court, who would you characterize as a strict constructionist? Who would you characterize as a fair constructionist? How would you characterize the remaining justices?

Response: Although the current members of the United States Supreme Court sometimes emphasize different interpretive tools—giving, from example, greater or less prominence to text, history or precedent in a particular case—I believe each of them attempts in good faith to give a fair reading to the Constitutional provisions that come before the Court. For that reason, I would characterize each member of the current Court as a ''fair constructionist.''

(c) In terms of judicial philosophy, please name several judges, living or dead, whom you admire and would like to emulate on the bench.

Response: There is no judge, living or dead, whom I would seek to emulate on the bench,

whether in terms of judicial philosophy or otherwise. If I am fortunate enough to be confirmed, I hope to seek aid from whatever legal materials may shed light on the problem before me, and thus to reach the correct answer to that problem to the best of my abilities, without any preconception about how some other judge might approach the question.

I have been fortunate to know several great judges and justices in my lifetime. I admire Judge Amalya Kearse and Justice Anthony Kennedy, for whom I was a law clerk. During my time as a law clerk for Justice Kennedy, I also got to work with retired Justice Lewis F. Powell, Jr., for whom I developed a great deal of affection and admiration.

(2) In an attempt to learn more about your judicial philosophy, several of my colleagues asked for your opinion about constitutional questions that are now settled law and that are unlikely to come before you as an appellate court judge. For example, Chairman Leahy asked for your views on Romer v. Evans, a Supreme Court opinion striking down a state constitutional provision that prohibited municipalities from passing gay rights ordinances. You responded: ''the question as framed is inherently unknowable for somebody in my position who has not sat through the case, listened to the arguments, conferred with the colleagues, and done all of the legwork of investigating every last clue that the briefs and the arguments offer up.''

Likewise, in response to questioning from Senator Schumer, you stated: ''The only time that I will feel comfortable in opining whether the Court got it right would be if I had done everything that the Court had to do in order to actually issue their ruling.''

(a) In your role as an Assistant to the Solicitor General, I am sure you read many of the Supreme Court's decisions. Have you ever expressed any opinion on the merits of a Supreme Court decision, to your colleagues or friends, when you had not read the briefs and watched the oral argument in the case? For example, have you ever told anyone that you thought the Romer v. Evans was rightly or wrongly decided?

Response. During my tenure at the Solicitor General's office, it was not uncommon for lawyers in the office to discuss issues then pending, or recently decided, by the Supreme Court. Such discussions were generally informal (often at the lunch table, since it was the practice of the attorneys in the office to lunch together in the Department's cafeteria) and did not purport to reflect a considered judgment that a particular decision was objectively ''right'' or ''wrong'' based on an appraisal of all briefing, argument, and primary materials—the type of judgment that a sitting judge would have to make in deciding the case. It was probably the case that neither my Justice Department colleagues nor I had read every brief filed in a particular case or attended argument. Generally, my colleagues and I would speak of a particular decision in terms of whether it served the Government's programmatic interests and/or whether the majority opinion set forth better reasons for the outcome than did the dissenting opinion (i.e., whether one of the opinions was a better piece of legal reasoning and writing). I do not have any recollection that I or any of my colleagues ever described any particular decision (including Romer) as ''wrong,'' but it is possible that remarks such as that were made in informal conversations—as shorthand for whether a decision accorded with the Government's interest in an area or whether the outcome urged by a dissenting opinion was advocated better than the result reached by the Court's majority.

(b) You and I met privately before your hearing, and I asked you for your views on Roe v. Wade. You indicated that you considered the answer to that question to be private matter. But your answer suggested that you do have an opinion. Do you have an opinion on the merits of Roe v. Wade? If so, have you read the briefs and a transcript of the oral argument?

Response: I stated during our meeting that, like many Americans, I have personal views on the subject of abortion, which views I consider a private matter that I was unprepared to share or discuss with you. I also stated that I do not harbor any personal views of any kind that, if I were a judge, would preclude me from applying controlling Supreme Court case law in the area of abortion. I did not state that I have private views on whether the case of Roe v. Wade was correctly decided. As I stated during my hearing, it would not be appropriate for me to express such a view without doing the intensive work that a judge hearing that case would have to under take—not only reading briefs, and hearing the arguments of counsel, but also independently investigating the relevant constitutional text, case law, and history.

(3) You serve on the National Board of Directors for a non-profit foundation called the Center for the Community Interest, or CCI. According to CCI's website, the group's goal is ''to make communities and neighborhoods safe places to live and raised children and to make the public spaces of our cities secure and inviting places for all by helping to identify common sense, balanced solution to crime and quality-of-life problems and to defend those policies against unreasonable legal attacks.''

(a) How did you become associated with CCI? For how long have you served on the Board of Directors?

Response: In the Fall of 1998, Eliot Spitzer was elected Attorney General of New York. Mr. Spitzer was a Board member of CCI (and, through his family foundation, was and is an important financial supporter of CCI). As a result of his election, Mr. Spitzer had to resign his Board position. I was invited to join the board, and fill the ensuing vacancy, by another Board member, Scott Muller has long been involved in CCI, and I knew him as a highly respected attorney who practices in Washington, D.C.and New York City; he was recently confirmed by the Senate as General Counsel of the CIA. I have served on the Board since my election in late 1998/early 1999.

(b) As a director, what role do you plan in the management of the organization? How frequently does the Board meet?

Response: CCI has a full-time staff that deals with day-to-day matters. The Board deals with major policy issues and the general direction and management of the organization.

It has been a goal of the current Board to increase the number of times we meet. When I first joined the Board, we met only twice a year. We now try to meet three or four times a year. Meetings of the Board may be conducted if a quorum of a majority of the directors is present. Although I try to attend every meeting personally or by telephone, I have not participated in every meeting of the Board that has been held since I joined the Board.

(4) Although the organization purports to defend ''common sense'' government policies ''against unreasonable legal attacks,'' CCI has adopted some very controversial positions over the last few years. For example, in Dickerson v. United States, CCI filed an amicus brief urging the Supreme Court to overturn the landmark Miranda decision, which ensures that criminal suspects have adequate notice of their legal rights.

As you know, the position favored by CCI in Dickerson was rejected by a decisive seven member majority of the Supreme Court, in a decision authored by Chief Justice Rehnquist. The only dissenters in the case were Justices Antonin Scalia and Clarence Thomas.

(a) As a Director of CCI, did you participate in deliberations or play any other role in the group's decision to file an amicus brief in Dickerson?

Response: Yes. I was one of the Board members who voted on the question whether CCI should file a brief in the case.

(b) Do you support the group's position in that case? Why or why not?

Response: I voted in favor of filing an amicus brief in the case. As I saw it, the case primarily involved an important unsettled legal issue that hinged on the constitutionality of an Act of Congress, 18 U.S.C. §3501, rather than the issue whether Miranda should be superseded because of any disagreement that the current Supreme Court might have with that decision.

As is widely known, the Supreme Court in Miranda required that certain warnings be given to suspects during custodial interrogations. It is less widely known that, in announcing that ruling, the Supreme Court also stated (384 U.S. at 467): ''It is impossible for us to foresee the potential alternatives for protecting the privilege which might be devised by Congress or the States in the exercise of their creative rule-making capacities. Therefore we cannot say that the Constitution necessarily requires adherence to any particular solution for the inherent compulsions of the interrogation process as it is presently conducted. Our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect. We encourage Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our criminal laws.''

In 1968, in the wake of that decision and in reliance on the Court's suggestion, Congress enacted 18 U.S.C. §3501. That statute required federal courts to admit into evidence all voluntary confessions, after assessing the issue of voluntariness in light of all the facts and circumstances surrounding the confession—including whether the suspect received the warnings required by the Miranda case.

Although some lower courts had assumed that Section 3501 was not constitutional, as a CCI Board member I supported the filing of an amicus brief that supported the constitutionality of the statute. I believed that a law duly passed by both Houses of Congress and signed by the President should not be ignored by the lower courts without an authoritative resolution of the constitutional question by the Supreme Court of the United States.

(c) Do you think that the defendant's challenge of the Fourth Circuit's decision in Dickerson was an unreasonable legal attack?

Response: No.

(d) Chief Justice Rehnquist's decision in Dickerson invoked the doctrine of stare decisis. Do you agree with the application of that doctrine in this case? When is it appropriate for the Supreme Court to overturn its own precedents?

Response: Dickerson reflects a reasonable application of the doctrine of stare decisis. In my view, it is rarely appropriate for the Supreme Court to overturn one of its own precedents. The circumstances that bear on the appropriateness of such a course were summarized by the Court in Agostini v. Felton, 521 U.S. 203, 235–37 (1997), and by the plurality opinion in Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 854–55 (1992).

(5) Dickerson was an alarming case to many of us because the Fourth Circuit Court of Appeals, on its own initiative, determined

that Miranda was no longer binding law. They reached this conclusion even though the Supreme Court continued to apply *Miranda* to criminal cases in both the federal and state systems; and despite the fact that neither the government nor the criminal defendant was willing to argue that Miranda did not apply. The Fourth Circuit's ruling in Dickerson strikes me as a prime example of the conservative judicial activism we sometimes see today.

(a) What assurances can you give the Committee that you will follow Supreme Court precedent unless and until the Court explicitly overrules itself?

Response: I can absolutely assure the Committee that I will follow binding Supreme Court precedent until and unless such precedent has been displaced by subsequent decisions of the Supreme Court itself.

(b) If confirmed to the D.C. Circuit, can you assure us that you will faithfully apply the Supreme Court's ruling in Miranda? What about the Supreme Court's decision in Bakke, which upheld the constitutionality of affirmative action programs in certain circumstances?

Response. I can assure the Committee that I would faithfully apply the Miranda decision as I would any other Supreme Court case that has not been superseded by the Court. With respect to Bakke specifically, in which there was no majority opinion by the Court, there is arguably a division among the courts of appeals on the question whether the various opinions issued by the individual Justices who participated in the case set forth a rule of law that lower courts are required to follow. Compare Hopwood v. Texas, 78 F.3d 932, 944 (5th Cir. 1996), and Johnson v. Board of Regents of Univ. Georgia, 263 F.3d 1234, 1247–50, 1261 (11th Cir. 2001), with Smith v. University of Washington Law Sch., 233 F.3d 1188, 1199–1200 (9th Cir. 2000), and Grutter v. Bollinger, 288 F.3d 732, 738–42 (6th Cir. 2002). As I stated during my appearance before the Committee, because that issue might come before me as judge, I do not believe I should express any views on it.

(6) Let me ask you about two other controversial positions that CCI has adopted in the last few years. In United States v. Knights, CCI argued as an amicus party that warrantless, suspicionless searches of probationers and parolees are constitutional. Likewise, in Department of Housing and Urban Development v. Rucker, CCI defended HUD's so-called ''One-Strike'' policy, which permitted automatic eviction of an entire household from public housing if any resident or guest was involved in a drug-related crime.

(a) As a Director of CCI, did you participate in deliberations or play any other role in the group's decision to file an amicus brief in Knights or Rucker?

Response. I do not have any recollection of participating in any Board deliberations concerning these two cases. I have made inquiry of the CCI staff, and I have been advised that neither case came before the Board during my tenure as a Board member. In the case of Rucker, it appears that CCI became involved in the litigation while the case was pending in the lower federal courts, and thus the issue whether to participate in the litigation came before the Board before I became a Board member. In the case of Knights, I have been advised that CCI's position echoed the view taken by CCI in a 1997 case that presented a similar issue. I am advised that because the issue already had been addressed by the Board in connection with that 1997 case, the Executive Committee of the Board (of which I was not a member) authorized the filing of the brief without further input from other Board members.

(b) Do you support the group's position in either of these cases? Why or why not?

Response. I have not made a sufficient, independent study of the issues and briefing in each case to know whether I agree with the positions espoused by CCI in these cases. I would note, however, that each case resulted in a unanimous opinion by the Supreme Court that appears to vindicate the position urged by CCI.

(7) It is difficult to find a news account about your nomination that fails to mention your status as a potential nominee of President Bush to the Supreme Court. Frankly, I think this speculation is very premature. You do not have any judicial record yet, so it is hard to know what kind of judge you will be on the Court of Appeals.

(a) Have you given any thought to whether you might like to serve on the Supreme Court someday? What are your aspirations at this point in your career?

Response. During the pendency of my nomination, my wife and I occasionally have received from friends, acquaintances and well-wishers copies of the types of newspaper articles to which your question refers. I have seen some of those articles in our local newspapers as well. Of course, any lawyer would be honored to be viewed as someone who some day might be considered for a position on the Supreme Court. However, beyond discussing with friends and acquaintances the contents of such press articles, I have not carefully considered the issue. As your question points out, it would be premature for me to do so. My aspirations at this point are to be confirmed as a United States Circuit Judge, and to discharge the duties of that position to the best of my abilities.

(b) Has anyone from the White House or the Justice Department ever discussed with you the prospect of serving on the Supreme Court someday? If so, what did he or she tell you?

Response. No one from the White House or the Justice Department has discussed with me the prospect of serving on the Supreme Court of the United States.

Mr. HATCH. Mr. President, I do not want to read them all, but I will if I have to, and I think the distinguished Senator from Illinois ought to be fair.

These answers are very competent, good answers by a very competent, well-qualified, terrific nominee for the Circuit Court of Appeals for the District of Columbia, the first Hispanic nominee in the history of this country. I suggest you read your own answers to your own questions, and I think you will be pretty impressed with him.

(Mr. ENSIGN assumed the Chair.)

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. Would the Senator concede it is virtually impossible to conduct a debate in this format where every question I ask is questioned? Will the Senator be willing to enter into a unanimous consent agreement for the next half hour, equally divide the time between us, and then return the floor to the Senator from Utah so we can have a real debate rather than a contrived attempt to ask questions and to make rebuttals to statements made on the floor?

Mr. HATCH. Of course I will not. First, I have the floor and I am retaining the floor because I have questions from both sides. I am willing to take questions from your side. I am not ignoring those. It is about time the American people hear the truth. We have heard enough rubbish. Now we should hear the truth. In all honesty, that is what we are going to do this evening.

I have heard a lot of ridiculous remarks over there that do not really deserve listening to. So we are going to hear some remarks tonight that deserve being listened to, and we are going to get the facts. This unmitigated bullcorn that he has not answered questions is exactly that.

I think the distinguished Junior Senator from Tennessee tore the hide off the Democrats tonight. I was so doggone impressed, I want to compliment my colleague. But he was not the only one. I have had colleague after colleague stand up over here and tell the truth, and I have had colleague after colleague over there hide behind these phony issues they have raised. They are phony, and it is a double standard. I am ashamed of some of the arguments that have been made over there, absolutely ashamed, and every Hispanic in America ought to be ashamed that they would stoop to this level against a qualified nominee. But not just every Hispanic, every American who wants a great judiciary ought to be outraged by what is happening.

I have never seen this type of treatment of anybody who has been nominated to a circuit court of appeals. I have seen some pretty shabby treatment in my day for some of the people who have been appointed by Republican Presidents, but nobody has had to endure the calumny and the downright despicable comments that this Hispanic nominee, with all these qualifications in the world, has had to endure. It is disgusting.

I know there are people on the other side who have clear thinking who ought to be disturbed by this, and I hope they will rise up in that caucus and say, we have had enough of this. We should not be treating any American this way, let alone somebody like this Hispanic.

Mr. REID. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Utah yield for a parliamentary inquiry?

Mr. HATCH. Not at this point. I would like to finish what I am saying.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. REID. Parliamentary inquiry, Mr. President.

Mr. HATCH. Without losing my right to the floor, I am happy to yield for a parliamentary inquiry.

Mr. REID. Mr. President, I would ask the Chair to determine if the word ''despicable'' relating to the remarks that we have been making for 10 days——

Mr. HATCH. I withdraw the word. I ask unanimous consent that that word be withdrawn.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH. Even though I think it was probably the right word to use.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. I am happy to yield to the Senator from Virginia without losing my right to the floor.

Mr. ALLEN. I ask the Senator from Utah to yield for a question.

Mr. HATCH. Without losing my right to the floor.

Mr. ALLEN. Mr. President, Senator WARNER, who was presiding earlier, knows the Senator from Utah is not alone in the feelings he is expressing. We see it in Virginia. In fact, we see it all the way across the Nation, from the San Diego Tribune to all the papers in Virginia that have taken a stand on this issue. They state the Democrats are creating a new double standard that applies only to the nomination of Miguel Estrada. Editorials are unanimous in Virginia, whether it is the Fredericksburg Free Lance-Star, the Richmond Times-Dispatch, even the Winchester Star out in the Shenandoah Valley. They all say, stop filibustering, take a stand and confirm this highly qualified nominee. The Winchester Star in particular—and, by the way, that is a newspaper that is owned by a former colleague of some of our Members, Senator Harry Byrd, and they wrote in particular that the request for the Solicitor General memoranda is outrageous and that to accede to it would compromise that body's ability to properly defend the Government's interests.

Is the Senator from Utah aware that even editorial writers in this fine community in the Shenandoah Valley of Virginia found this Democratic request so improper?

Mr. HATCH. I was not aware of that. But I have to say, I served with Senator Harry Byrd. He is a marvelous human being. He was an Independent who voted mainly with the Democrats, but a very fair, honorable, decent man, one of the finest people who ever served. I agree with the editorial 100 percent.

Mr. ALLEN. Will the Senator yield for another question?

Mr. HATCH. Without losing my right to the floor.

Mr. ALLEN. Could the Senator share with us what the historical practices are as far as the deliberative memoranda are concerned? Have they ever been asked for in confirmation hearings? We are talking about this double standard. They are asking for something, but what is the record? Has this ever been asked for before?

Mr. HATCH. No one before this nominee, to my knowledge—and I believe I am accurate, and we have checked it—no one has ever asked for appeal recommendations, certiorari recommendations, and amicus curiae recommendations. The reason they never have is that it is—I will use the term—despicable to ask for them because they know they cannot be given; that no self-respecting Attorney General or President would allow that to happen because that is a direct intrusion into the deliberative process of the Solicitor General's Office, the attorney for the people. Nobody else has ever done that before.

So we have to ask, why is it being done? And why would seven former Solicitors General, four of whom are Democrats, come out and say this cannot be done? Because they are right and my colleagues on the other side are wrong. They know they are wrong. I think that was geared to try to create a red herring issue so they could say, oh, my goodness, we do not know enough about him.

It took them 505 days to hold a hearing. I presume in that 505 days, knowing how the Judiciary Committee works—and I really know how it works—every Democrat staffer assigned to that was going through every document this man has ever had anything to do with. They scrutinized him like they scrutinize any criminal, and certainly he is not that. But they scrutinized him. That is not a bad thing. I am not criticizing them for that. They know everything about Miguel Estrada that is knowable, and there is a lot. The transcript of the hearing is that big. Gee whiz, they act like there were not any questions or answers. Are you kidding? I think they think sometimes they can say these things and the American people are just going to buy it. Well, we are going to make sure they do not buy it because it is not true. That is what is killing me, is that my colleagues are saying things that just simply are not true if one looks at the RECORD.

Never before have those three areas of recommendations been asked for. They cite Robert Bork. They cite Justice Rehnquist. Those materials that were given were very limited. They were not anywhere near as sensitive as these. They were not necessarily privileged, although I believe some of them were given just because they were very limited requests. These are broad requests of documents that literally should never be given to any other branch of government, if we want a functioning Solicitor General's Office.

This is a game being played. It is a double standard and very unfair to this nominee. I think my colleagues are pointing that out in no uncertain terms.

Mr. ALLEN. Mr. President, will the Senator from Utah yield for a final question?

Mr. HATCH. Without losing my right to the floor.

Mr. ALLEN. I ask the Senator from Utah if he saw the responses that all of us were seeing, as this filibuster drags on, this unfair consideration of Miguel Estrada, whom Senator WARNER and I introduced to the committee nearly a year and a half after the President nominated him back in September—is he aware as more and more people read about this and hear about it that he is getting more support?

Our senatorial committee Web site has had over 20,000 petitions in support of President Bush's nomination of this outstanding hero. Is the Senator aware that Miguel Estrada is the American dream, the American dream being born these days—not in the days of Horatio Alger, but individually came to this country with his own hard work, studiousness, and efforts, rose to lead the Law Review at Harvard, and other positions in government. Is he aware that support is building by the hour for Miguel Estrada and also in opposition to these obstructionist tactics denying this man a fair up-or-down vote?

Mr. HATCH. I have talked to a wide variety of people today and every day. I have been on radio shows talking about this. I have been on Hispanic radio shows, Latino radio shows. They are getting very angry. And they should.

I am calling upon all Democrats, Independents, and Republicans, as well, to come out of the woodwork and let our friends on the other side of the floor know this will not last. They resent this. There is a price to be paid for this type of obstruction, which is what it is. This is unfair obstruction that we did not do to their nominees.

I cannot understand for the life of me why they are doing it to this Hispanic nominee with all these credentials, with the gold standard highest rating of the American Bar Association—their gold standard by their own definition. I do not understand it personally. I cannot see one reason to do it. People are getting very upset. I am getting thousands of calls saying: Hang in there; do not let them get away with this or the whole judiciary will be hurt; the whole judiciary will be hurt if this continues.

If we have a filibuster that continues like this, our colleagues on the other side are risking the complete breakdown of this process, the complete breakdown of the judicial nominating process, something that we have never done on our side.

Even when there have been cloture votes where they were not true filibusters but still cloture votes, their nominees got votes up and down.

If that is what they are about, I will shut up and not say much more. That is all we are saying. Just vote. All this complaining. Yesterday, I saw the minority leader come on the floor and say we should be getting about all the important business of the country. There is nothing more important in this country than having a fair judiciary. It is the judiciary that has saved the Constitution through all these years. This is a very important nominee and a very important court. If we do not do what is right, everything else that is important might not be as important in the future because we will not have a Constitution to abide by and live by that has kept this country free. This is very important.

To come from that side, when last year for the first time since the Budget Act was enacted, they did not pass a

budget because they had to face what we always did—it is tough to do it. They were not willing to put up with it and do the tough things, nor did they pass the majority of the appropriation bills. We had to wait until we became the majority, and we did it in an omnibus after the first of the year, but only after delays caused by the other side.

It was something I could hardly believe. I said if you want to get to the other important things which we do, too, have a vote up and down like we did for all of your nominees. Why treat this man differently? Why obstruct this nominee? Why play the politics of obstruction? Why be so unfair and why have this double standard?

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I am happy to yield to the distinguished Senator from North Carolina, and then I will yield to—

Mr. REID. I object. This is not proper procedure.

The PRESIDING OFFICER. The Senator from Utah has the floor and may yield.

Mr. HATCH. I yield to the distinguished Senator from North Carolina for a question, without losing my right to the floor.

Mrs. DOLE. Mr. President, in North Carolina the Kinston Free Press and the Winston-Salem Journal have called on Democrats to stop this filibuster. Even a student writer for the University of North Carolina school paper took the time to write about it and criticize the filibuster. This obstructionism is being noticed and people are angry.

On this question of the Solicitor General's memos, the Winston-Salem Journal wrote: ''Congress should not be asking for such material.''

Does the Senator from Utah agree with the journal that ''if Democrats have a substantive reason for opposing Estrada's nomination, it is past time to produce it. If not, they should let the Senate vote.''

Does the Senator agree?

Mr. HATCH. I sure do agree with that. There has not been one substantive argument against this man other than the phony arguments like getting these privileged documents that everyone knows the administration cannot get. There are two reasons for that: They want to embarrass the administration by trying to make the administration look like they are trying to withhold documents that they should give, when they should not give them; and they are trying to defeat Miguel Estrada on what is really a red herring issue.

That particular editorial of the Winston-Salem Journal said: The truth is, the Democrats oppose Estrada because they believe he is too conservative; an unsavory implication is that they believe Hispanics should be liberal.

I think the editorial got it right on the money.

Another truth is, as the Senator said: The Constitution gives Presidents the right to nominate judges and the Presidents usually choose nominees they believe share their political views. If Democrats have a substantive reason for opposing Estrada's nomination, it is past time to produce it. If not, they should let the Senate vote.

I ask unanimous consent the Winston-Salem Journal article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Winston-Salem Journal, Feb. 20, 2003]

CHOOSING JUDGES

Democratic and Republican senators have taken turns for years behaving badly when it comes to federal judicial nominees. Now Democrats have taken the unproductive battles to a new low in their refusal to allow a vote on the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia.

It's true that Senate Republicans are guilty of considerable hypocrisy. They bottled up many of President Clinton's nominees in the Judiciary Committee and kept even moderate nominees from having hearings on the Senate floor. Then when President Bush began sending along nominees, Republicans urged Democrats to abandon partisanship and vote for judicial nominees on their merits, not their views.

But Democrats haven't helped matters any by their determination to get revenge. The result is more delays in filling court vacancies and more harm to the federal judicial system.

President Bush stoked the fire by nominating some controversial figures, most notably U.S. District Judge Charles Pickering of Mississippi for the 5th Circuit Court of Appeals, while Democrats held their slim majority in the Senate. Pickering was a controversial choice largely because of his record on race. Democrats voted down his nomination in the Judiciary Committee. Their opposition to him was probably justified, but they should have allowed a vote. The entire Senate, not just the members of the Judiciary Committee, are supposed to have the right to confirm a president's judicial choices.

Now Republicans are back in control of the Senate. Democrats' refusal to allow a vote on Estrada's nomination is worse than their opposition to Pickering, because Estrada does not have any blots on his record comparable to Pickering's. His is an inspiring success story of a Honduran immigrant who became editor of the Harvard Law Review and a clerk for U.S. Supreme Court Justice Anthony Kennedy. He was an assistant solicitor general under Clinton. He's been rated ''highly qualified'' by the American Bar Association.

Democrats have come up with a variety of objections to Estrada, none of them convincing. They question his youth and lack of judicial experience, but other appeals court judges have been confirmed with similar qualifications. They have demanded that he turn over confidential papers from his years as solicitor general. Congress should not be asking for such material, as all living solicitors general have said in a letter.

Democrats have said that Bush nominated Estrada just because he is Hispanic.

The truth is that Democrats oppose Estrada because they believe that he is too conservative. An unsavory implication is that they believe Hispanics should be liberal.

Another truth is that the Constitution gives presidents the right to nominate judges, and that presidents usually choose nominees who they believe share their political views. If Democrats have a substantive reason for opposing Estrada's nomination, it's past time to produce it. If not, they should let the Senate vote.

Mr. BUNNING. Will the Senator yield?

Mr. HATCH. I yield without losing my right to the floor.

Mr. BUNNING. Mr. President, I say to the Senator from Utah, I have read an editorial from the Riverside Press Enterprise in California which said in response to this fishing expedition on the confidential memoranda that the Democrats claim they want to review Mr. Estrada's legal views: One suspects that is not the role the Democrats have in mind for their memoranda. They probably hope to expose Mr. Estrada's conservative views, which no one doubts he holds, in hopes of defeating the nomination or at least scoring some political points.

Does the Senator agree that is the reason they are doing what they are doing, trying to score political points?

Mr. HATCH. I don't see how they score political points by filibustering the first Hispanic nominee ever nominated to the court of appeals for the District of Columbia. That is a heck of a way to score political points, unless it is with their really far left people who seem to be in domination of that party right now. They are pleased.

People for the American Way, you have to really be on the left to be with them. In fact, their biggest support comes from Hollywood. Not that we should decry our Hollywood stars as experts on everything. I don't think we should always find them not to be. I am sure they are experts on some things, but they seem to not fully understand what is going on here.

The Press Enterprise, Riverside, CA, editorial says: The Democrats tactic employed last week of filibustering the nomination of Miguel A. Estrada to be the U.S. Court of Appeals for the District of Columbia Circuit is an anything-goes strategy that ought to be abandoned.

And then later: A first step would be to not filibuster nominations like this one.

They say: ''Parties need to deescalate.'' I agree with that.

A first step would be to not filibuster nominations like this one of a well-qualified nominees. He's distinctly an American success story, having immigrated from Honduras, gone to Columbia and Harvard, and served as a clerk to a Supreme Court Justice.

I ask unanimous consent the Press Enterprise editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Press-Enterprise (Riverside, CA) Feb. 18, 2003]

The process of filling a vacancy in the federal judiciary is a political one. The Founding Fathers placed it into a political area. The president nominates and the Senate confirms—or doesn't—but that doesn't mean anything goes.

The Democrats' tactic employed last week of filibustering the nomination of Miguel A. Estrada to the U.S. Court of Appeals for the District of Columbia Circuit is an anything-goes strategy that ought to be abandoned. However, with 49 Democratic senators, they are likely to be able to muster the 41 votes needed to maintain a filibuster.

What makes the filibuster inappropriate is that it is rarely used to block a judicial nominee, and Mr. Estrada hardly qualifies as a target for such a big gun. Yes, he was not completely open with members of the Judiciary Committee when he appeared, and Democratic senators are frustrated by the White House's refusal to release to them memoranda he wrote as solicitor general.

But in the best of times, such a request would be out of line, and these are closer to the worst than to the best for the nomination process. If the memoranda were to be used as an honest beginning to a discussion of Mr. Estrada's legal views, there might be some justification for releasing the documents that would normally be considered privileged.

One suspects that's not the role the Democrats have in mind for the memoranda. They probably hope to expose Mr. Estrada's conservative views, which no one doubts he holds, in hopes of defeating the nomination or at least scoring some political points.

The two parties have been allowing their political battles over judicial nominees to escalate since Robert H. Bork's nomination to the U.S. Supreme Court in 1987. One suspects that Republicans, if they were in the minority, would have done the same with the Estrada nomination. The parties need to de-escalate.

A first step would be to not filibuster nominations like this one of a well-qualified nominee. He's distinctly an American success story, having immigrated from Honduras, gone to Columbia and Harvard and served as a clerk to a Supreme Court justice.

Democrats, or Republicans when they are in the minority, may fairly make things tough on a nominee in committee or on the Senate floor, in order to fashion nominations more to their liking. But the process has to stop at some point. It's one of advice and consent, not advise and confront.

Mr. SESSIONS. Will the Senator yield?

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. The Senator, as chairman of the Judiciary Committee, disclosed the Department of Justice has declined to produce these internal memoranda. I ask the Senator this: Is it a fact those memoranda belong to the U.S. Department of Justice and under the attorney-client rule they are not Miguel Estrada's and he has no ability whatsoever to produce these documents?

Mr. HATCH. I certainly agree. I have heard the distinguished Senator from Illinois say that he should have produced these documents. He has no right to produce them. He personally said I am proud of my work. If they can give it up, I would be proud to have it given up. But he knows they cannot. I believe the distinguished Senator from Illinois knows they cannot give up these documents. Everybody knows that. That is why it is such a phony red herring issue, but it is the only one they really have.

They started off with he has not had any judicial experience. That is the phoniest thing of all, because that means virtually every Hispanic lawyer doesn't have a chance to be on the Federal bench because they have no judicial experience, in spite of the fact that five of the eight judges on the DC Circuit Court of Appeals had no judicial experience before they went on the court.

Why the double standard? Why is it we are requiring this of Miguel Estrada but not of them? Why is it when Republicans ran the committee we didn't have that difficulty? We never raised that phony issue. Why is it raised now?

Mr. REID. Will the Senator yield for a question?

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. Chairman HATCH, I know you chaired the committee and you conducted many hearings, both in your recent chairmanship and prior to that when you were chairman of the committee. But isn't it a fact that the hearing of Miguel Estrada was conducted when the Democrats were in control of the Judiciary Committee, Senator LEAHY was the chairman, and they held the committee hearing as long as they chose and could have held even longer hearings had they had any further questions to ask?

Mr. HATCH. It is a fact that they were in control. They chaired the hearings. Senator SCHUMER chaired the hearing at the direction of Chairman LEAHY, the chairman. It was one of the longest hearings for a Circuit Court of Appeals nominee I can recall. They asked every question they wanted to. He answered them, and he answered them fairly and well, as I have been showing here tonight, and as the distinguished Junior Senator from Tennessee, I think, showed in detail earlier in the evening. I commend him and ask everybody to read that.

In all honesty, they controlled the whole doggone process. They even said on the floor, even during this debate, that the hearing was fair—because they conducted it. If it was fair, that means they covered all the questions they wanted answered.

Then we have these phony arguments that he didn't answer the question. Read the remarks of the distinguished Senator from Tennessee, Senator ALEXANDER, this evening and read the transcript. Read the answers to these written questions. I only read a few of them because it more than blew away those phony arguments. Why the double standard? Why the obstruction? Why are we going through this?

I said I would yield to my friend and colleague from Nevada, without losing my right to the floor.

Mr. REID. I would say to my friend, I would respectfully submit, you don't need to say ''without losing your right to the floor.'' You have the floor. You don't have to say that.

Anyway, I ask my distinguished friend from Utah, the neighboring State to Nevada: It is true, is it not, whether you agree or not, we have asked that the Justice Department, the administration, release the memos written by Miguel Estrada when he worked for the Solicitor's Office? You would agree with that?

Mr. HATCH. I agree Senator LEAHY sent a letter to the Department of Justice asking for these privileged matters that have never been given up before, and will not be given up, and should not be given up; knowing, I think, deep down, that they would not be given up.

Mr. REID. The Senator, of course, is aware——

Mr. HATCH. I think it is a political game, if you want to know.

Mr. REID. The Senator has stated in answer to the question of the distinguished Senator from Alabama that Miguel Estrada has no ability to have these released, is that true?

Mr. HATCH. That is correct. He doesn't control the Justice Department. He is no longer an employee of the Justice Department. Nor should he ask the Justice Department for these records.

Mr. REID. I further ask the Senator, it is true, however, that the administration, whether through the counsel's office of the President, the President himself, or the Attorney General, could release those materials?

Mr. HATCH. No, it isn't true. I don't believe the Attorney General could. I don't think any responsible Attorney General could release those. If you are saying is it theoretically possible for somebody to disobey the law, the rules, to not live up to the privileged and confidential information, to ignore every aspect of the executive branch of Government—I suppose somebody could say yes. But I can't. I don't think he would have—I don't think the Attorney General has that privilege; no, I don't.

Mr. REID. Let me ask the Senator this question. Are you saying on the five occasions we know of, there could be more, when the Attorney General released memoranda from the Solicitor's Office relating to Rehnquist, Bork, Civiletti, and others, that they were violating the law when they released those documents?

Mr. HATCH. They were completely different documents. They had nothing to do with recommendations for appeals, certiorari petitions, or amicus curiae matters. No. They have never, ever been asked for before, to my knowledge, and they have never, ever been given, nor would they.

By the way, there have been some limited documents given by the Justice Department in some nomination matters, none of them related to what were requested by the Senate Democrats in this matter. And there are only a couple of cases where the Attorney General did allow that.

The other cases, they appeared to have been leaked by friends of Democrats at the Justice Department. So they were not given up by the Justice

Department. We have more than made that case throughout this debate. There is no question about it. And it is just another phony argument. I do not blame my colleague from Nevada for not knowing that. But I think it is time to learn it.

Mr. REID. Could I ask the Senator another question?

Mr. HATCH. Sure.

Mr. REID. I don't mind the Senator commenting on my intelligence.

Mr. HATCH. I think the Senator is very intelligent.

Mr. REID. Let me just complete my question. The Senator has knowledge that on occasions there have been memos released from the Solicitor General's Office relating to matters before the Senate. I ask the question of the Senator from Utah, does that mean on those occasions when they were released, a law was violated?

Mr. HATCH. I am sorry, I missed that.

Mr. REID. We have established in the dialog between the Senator from Utah and the Senator from Nevada that there have been occasions where the Solicitor's memos have been given to the Senate. The Senator says they have been on rare occasions, two occasions, I think the Senator from Utah said. We say five. But on those occasions, does the Senator believe that the law was violated, and those people who released those memos should have been prosecuted in some way?

Mr. HATCH. They were not the same papers, they were not privileged, confidential documents of the order of magnitude that these are.

Let me add, the Clinton nominee—this is a Caucasian, by the way, not a Hispanic. The Clinton nominee, William Bryce, who was confirmed to the Federal circuit in 1994, was an assistant Solicitor General, just like Miguel Estrada. But nobody asked for his memoranda from his time in the Solicitor General's Office. He is one of eight former Solicitor General Office attorneys who have been confirmed at circuit courts without disclosure of their memoranda.

Why the double standard? Why do we do this to the only Hispanic who has ever been nominated for the Circuit Court of Appeals? And why are the Democrats doing this to this Hispanic man? Why are they being so unfair? We never did it. We wouldn't dare do it. The fact of the matter is, I don't think anybody who understands the nature of the Solicitor General's Office, and apparently some on your side don't seem to understand that——

Mr. REID. If my friend will yield for one final question?

Mr. HATCH. Let me just finish my remarks and I will go to your final question.

Why the double standard? Is there a specific allegation that my colleagues are concerned about for which they want to review these highly confidential documents? If there is, I would like to know what it is. I don't want a fishing expedition, even if we could give them. I don't think there is a good explanation as to why they want these documents. I think that is why everyone who looks at this in fairness views it as nothing but a fishing expedition, which is exactly what it is.

We couldn't get Miguel Estrada any other way, so why don't we go fish through all these documents and find just something to pin our antagonism towards him on, so we do not look so doggone bad? Frankly, I think the arguments on the other side look terrible.

Mr. GREGG. Point of order.

Mr. REID. Will the Senator yield for a final question?

Mr. HATCH. Let me yield for one final question by the distinguished minority whip, and then I will yield to someone on this side.

The PRESIDING OFFICER. The Senator from Nevada has the floor.

Mr. REID. Mr. President, I say to the distinguished Senator from Utah——

Mr. HATCH. I want to do this in fairness.

Mr. REID. Bork, Civiletti, Rehnquist, and two others, none of whom are Hispanics—and I think a person's ethnicity has nothing to do with the point we have made. The point we have made is on other occasions, memos from the Solicitor General's Office have been made public in this body.

Mr. HATCH. Can I correct the Senator? They were not Solicitor General memoranda. They had nothing from the Solicitor's Office.

Mr. REID. I would respectfully submit we have in the RECORD, admitted yesterday, letters exchanged with Senator BIDEN and the Solicitor General at that time, Bolton, who was Solicitor General, that laid out in some detail the materials that were obtained, and in addition to that we have other materials obtained from the Solicitor General's Office that were memoranda. They are either legal or they are not.

I have to ask the Senator this question: If these memos were relevant—I repeat that they were. It is in the RECORD. We have dates on the letters of when they were exchanged between the Solicitors General and Senator BIDEN, who was chairman of the committee at that time. I respectfully submit to my friend they are not legal. The decision made by the administration is that they are not going to release these documents.

Mr. HATCH. Does the Senator have a question for me?

Mr. REID. Was not a decision made by this administration that they are not going to release these documents even though they have in the past?

Mr. HATCH. Let me answer in this way. Nobody has previously asked for appeal recommendations in the Solicitor General's Office—some of the most important work that is done; certiorari recommendations in the Solicitor General's Office; some of the most important work done by that office; or amicus curiae recommendations, some of the most important work done in that office.

Let me read from the letter from the Department of Justice about what it has to say about this in response to this type of allegation by the Democrats.

Of the seven cited nominees—

Remember. We hear all about all of these people who got Department of Justice materials. Let us look at the facts. I hope my colleague will listen to some. I hope my other colleagues will listen because we have had these false arguments made day in and day out. So I am going to put them to bed right now.

> Of the seven cited nominees, the hearings of only two, Judge Bork and Judge Easterbrook, involved documents from their service in the Office of the Solicitor General. Senator SCHUMER placed into Mr. Estrada's hearing record a single, two-page amicus recommendation memorandum that Judge Easterbrook authorized as an Assistant to the Solicitor General. The official record of Judge Easterbrook's confirmation hearing contains no references to this document and based on a comprehensive review of the department's files we do not believe that the department authorized its release in connection with Judge Easterbrook's nomination. Senator SCHUMER's possession of this memorandum does not suggest that the department waived applicable privileges and authorized its disclosure in connection with Judge Easterbrook's or any other nomination.

In other words, someone leaked that document illegally. And my colleagues have an illegal document leaked. At least that seems to be the glaring thing that happened here.

The Justice Department goes on to say:

> The hearing record of Judge Bork's nomination to the Supreme Court demonstrates that the committee received access to a limited number of documents related to three specific subjects of heightened interest to the committee, two of which were related to Judge Bork's involvement in Watergate-related issues and triggered specific concerns by the committee.

We have not had specific concerns here. All we have is a fishing expedition. These are with specific concerns.

Let us go further with what the Justice Department says:

> The vast majority of memoranda authored or received by Judge Bork when he served as Solicitor General were neither sought nor produced. And the limited category of documents that were produced for the committee did not reveal the internal deliberative recommendations or analysis of assistants to the Solicitor General regarding appeal, certiorari, or amicus recommendations in pending cases. The remaining five nominations cited at the hearings similarly do not justify the disclosure of deliberative material authored by Mr. Estrada. None of the limited documents disclosed in the hearings for these five nominations involved deliberative memoranda from the Office of Solicitor General. The committee, with respect to these five nominations, requested specific documents primarily related to allegations of miscondcut or malfeasance identified by the committee. Moreover, as noted before with respect to the nomination of Judge Trott, the committee requested documents wholly

unrelated to Judge Trott's service at the department.

Again, a vast majority of deliberative memoranda authored or received by these nominees were never sought nor received by the committee.

In sum, the existence of a few isolated examples where the executive branch on occasion called for very specific information does not in any way alter the fundamental and long-standing principle that memoranda from the Office of the Solicitor General and deliberative Department of Justice materials more broadly must remain protected in the confirmation context so as to maintain the integrity of the executive branch's decision-making process.

In conclusion, we emphasis that the Department of Justice appreciates and profoundly respects the Judiciary Committee's legitimate need to evaluate Mr. Estrada's qualification for the Federal bench. We again suggest, however, that the information currently available is more than adequate to allow the committee to determine whether Mr. Estrada is qualified to be a Federal judge.

I might just add again that this is more than adequate. This is more than has been asked of any nominee in history. Why the obstruction? Why the unfairness? Why are we so unfair to this Hispanic man who has all these qualifications that normally would blow people's minds—and do blow people's minds he is so qualified. Yet here he is being filibustered by my colleagues.

I call on my colleagues of goodwill to quit playing games and start doing what is right.

Mr. CHAMBLISS. Mr. President, will the Senator yield?

Mr. HATCH. I yield to the distinguished Senator from Georgia.

Mr. CHAMBLISS. Mr. President, there have been several editorials written by newspapers in my State that are very critical of the Democrats for the obstructionist attitude and filibustering of this particular nomination of Miguel Estrada. One of those editorials was written by the Atlanta Constitution, which is extremely critical of the process the Democrats are going through tonight as they have for the last 3 weeks. The Atlanta Constitution is one of the most liberal papers in the United States of America.

Mr. HATCH. That has been my experience.

Mr. CHAMBLISS. With respect to this issue of the memoranda that they have requested be produced by Mr. Estrada or by the Justice Department, I note that the Savannah Morning News in Savannah, GA, has written that the ''request is unprecedented''—that ''the Democratic leadership wants to continue trolling further and further from shore in a desperate attempt to find something—anything—they can hang an accusation on.''

They even write that perhaps they could subpoena a list of videotapes that Mr. Estrada rented as they did for Supreme Court nominee Robert Bork.

Does the Senator from Utah agree that this is a true fishing expedition as he has previously alluded, and if the Democratic leadership doesn't like what they have so far they can still vote against Mr. Estrada?

Mr. HATCH. I have been an attorney for a long, long time. I know a fishing expedition when I see one. I have been a Senator for 27 years. I have seen fishing expeditions before but never one as blatantly as this one, or exploiting a red herring issue like they are trying to do on this one.

I compliment the Senator. Let me read from the editorial in the Savannah Morning News just a couple of paragraphs.

The Democrats are upset because they haven't found a ''gotcha'' moment in Mr. Estrada's testimony or scholarship that would embarrass or contradict him, and thus provide them ammunition to defeat his nomination.

Then they went on to quote saying what the Senator from Georgia quoted.

They want to continue trolling further.

This is trolling like you have never seen before.

Then the next paragraph says:

The problem is, they've already had ample opportunities. If they weren't happy with his answers at his hearing last September, Democrats could have demanded another hearing. They did not. Nor did they take full advantage of normal procedure and submit written follow-up questions to Mr. Estrada after the hearing—only two of the 10 committee Democrats did so.

Because they lack the votes to defeat the nomination on the Senate floor they have resorted to manipulating the process by any means necessary—not, mind you, because they have evidence to oppose him, but because they don't.

Boy, I agree with that editorial.

Then they conclude by saying:

Mr. Estrada's nomination deserves an up-or-down vote in the Senate and not be held hostage by bipartisan parliamentary games.

I tell you, that sentence: Because they lack the votes to defeat the nomination on the Senate floor, they have resorted to manipulating the process by any means necessary, not, mind you, because they have evidence to oppose him, but because they don't.

This editorial writer and these writers get it accurately. They have not laid a glove on Miguel Estrada. Here we are in the third week of a filibuster against the only Hispanic nominee in the history of the country nominated to the Circuit Court of Appeals for the District of Columbia.

I ask unanimous consent that the Savannah Now editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Savannah Morning News, Feb. 13, 2003]

DEMOCRATS HOLD HOSTAGE

Miguel Estrada is President Bush's nominee to serve on the federal appeals court for the District of Columbia, regarded as the second-highest court in the land behind the U.S. Supreme Court.

He's young (41), a Hispanic immigrant success story (he was born and raised in Honduras before moving to the United States at age 17 and learning English) and generally conservative. That, and the fact that the D.C. appeals court is widely viewed as a stepping stone to the Supreme Court, makes Mr. Estrada public enemy No. 1 to Senate Democrats.

That a majority of Democrats would oppose putting Mr. Estrada on the bench is not surprising. That they would resort to unprecedented tactics to block a Senate vote to confirm him, however, is appalling overkill and partisan politics at its worst.

Democrats have threatened to mount a filibuster to prevent a floor vote they know they would lose—all 51 Republicans are believed to support Mr. Estrada's nomination, as do a handful of Democrats (including Georgia's Zell Miller). But the number of supporters apparently falls just short of the 60 needed to end debate and force a vote, so Minority Leader Tom Daschle is prepared to talk the nomination to death.

A filibuster has never been deployed against a lower-court nominee in the history of the Senate. It's akin to waging nuclear war over Bosnia. So why is one needed now to save the republic from Miguel Estrada?

Democrats argue that he is a ''stealth'' candidate of whom they know too little about his legal views. For example, they complain that during Judiciary Committee hearings on his nomination that he failed to answer questions about which Supreme Court cases he disagreed with.

But it would be improper for a potential judge on an appeals court to bias himself against cases he might hear. The lower court is obligated to apply the legal precedents set by the Supreme Court, whether the jurists agree or disagree with them. An appeals judge who issues a ruling that reflects his stated bias could be accused of conflict of interest. Judges must follow the law, not their hearts.

Democrats also are demanding that the Bush administration provide confidential papers Mr. Estrada wrote when he worked in the U.S. Solicitor General's Office. The Justice Department has refused on the grounds that those documents are ''highly privileged.''

Like the filibuster, that, too, is a Democratic tactic that is virtually unprecedented. Indeed, the Bush administration's position is supported in a letter signed by all seven living former solicitors general, who served in both Republican and Democratic administrations.

The Democrats are upset because they haven't found a ''gotcha'' moment in Mr. Estrada's testimony or scholarship that would embarrass or contradict him, and thus provide them ammunition to defeat his nomination. They want to continue trolling further and further from shore in a desperate attempt to find something, anything they can hang an accusation on. Perhaps they could subpoena the list of videotapes Mr. Estrada rented, as they did with Supreme Court nominee Robert Bork.

The problem is, they've already had ample opportunities. If they weren't happy with his answers at his hearing last September, Democrats could have demanded another hearing. They did not. Nor did they take full advantage of normal procedure and submit written follow-up questions to Mr. Estrada after the hearing (only two of the 10 committee Democrats did so).

Because they lack the votes to defeat the nomination on the Senate floor they have resorted to manipulating the process by any means necessary—not, mind you, because they have evidence to oppose him, but because they don't.

Is that really how Democrats want to go on record opposing the first Hispanic American nominated to the influential D.C. court of appeals?

Mr. Estrada's nomination deserves an up-or-down vote in the Senate, and not be held hostage by partisan parliamentary games.

Mr. DURBIN. Will the Senator yield?

Mr. ALLARD. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor, I yield to the Senator from Colorado.

Mr. ALLARD. Mr. President, is the Senator aware that the two largest newspapers in Colorado—the Rocky Mountain News and the Denver Post—have both called for the Democrat leadership not to filibuster this judicial nominee?

Mr. HATCH. I am aware.

Mr. ALLARD. Is the Senator aware that the Denver Post, which endorsed Al Gore in the 2000 Presidential election, wrote: ''To use a filibuster is to impose a new requirement that judges be confirmed by a supermajority''?

And is the Senator aware that the Rocky Mountain News wrote in an editorial: ''Keeping others from voting their conscience on this particular matter is simply out of line''?

Mr. HATCH. I am aware of those editorials. And I am also aware, and I want my colleagues to know, that there are more than 50 editorials throughout the country expressing the same matters.

I hold in my hand this binder of editorials in favor of Miguel Estrada—just editorial after editorial after editorial, saying how unfair this process really is, how unfair my colleagues on the other side have been, how they have ignored principles of just plain common decency, how they are obstructing—obstructing, in an unfair way—of course, obstruction, I guess, is always unfair—but how they have been obstructing this nominee. Why? Because, as the editorial writers say, they do not have anything on him.

Mr. ALLARD. I thank the Senator from Utah for yielding.

Mr. GREGG. I ask if the Senator from Utah will yield for a question.

Mr. HATCH. Without losing my right to the floor.

Mr. GREGG. I think the point that has been made by the Senator from Colorado is an appropriate one, citing the editorial from the Denver Post, I guess it was. And it raised a constitutional issue which is an issue that has not been discussed here very much.

Knowing that the Senator is one of the leading authorities in the Senate, and really in the Nation, on the issue of constitutional law, I would be interested in his interpretation of article II, section 2, of the Constitution, which says—and I will simply read it—

He—

Referring to the President—

shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other Officers of the United States. . . . The implication being that it does not take two-thirds to appoint a judge but, rather, a majority.

Is that your interpretation of the Constitution? And what is the implication of moving to a 60-vote majority in order to appoint a judge?

Mr. HATCH. The Senator is absolutely right. In the very same part of the Constitution, it mentions that there is a supermajority vote required for treaties. By implication, the Senator is correct, advice and consent means a vote up and down on the Senate floor. It certainly does not mean we should have to have a supermajority vote of 60, which is what the Democrats are insisting upon in this body, in order to confirm a circuit court of appeals nominee.

And why is the reason for that? Because the Constitution also talks in terms of the coequal branches of Government: the executive, the legislative, and the judiciary. All are supposed to be coequal, have coequal powers. If we require—because the Democrats will not end the filibuster against Miguel Estrada—60 votes before we can confirm any judge to a position in the judiciary, that diminishes the coequal power and status of the President. It also diminishes the coequal power and status of the judiciary, while increasing and augmenting the power of the legislative branch.

That is unconstitutional. And my colleagues are acting in a highly unconstitutional manner. And they are creating a constitutional crisis by refusing to end the filibuster and the obstructive tactics in this very important area of Constitutional law. And I have to tell you, there is a way around this, but I prefer that they end these obstructive tactics and that we, once and for all, decide that nobody is going to filibuster judicial nominees because the President does deserve, through his nominating power, a vote up and down—a vote up and down—on these judicial nominees.

That is as far as I am going to go this evening. But I have to say that my colleagues are asking for the world to see that the system is broken. If they break the system, then no holds barred, if they break the system, we have to uphold the Constitution on our side, and we are going to do it.

Now, all I can say is this. We have a clear majority of Senators who want to see Miguel Estrada confirmed. And a minority is obstructing—obstructing—O-B-S-T-R-U-C-T-I-N-G—did I spell it right?—obstructing him from being a judge, and obstructing us from exercising our advice and consent powers the Constitution provides.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. I am delighted to yield to my colleague from Illinois.

Mr. DURBIN. I would like to ask the Senator the following question: Has he not stated during the course of the day that the memoranda which we are seeking, namely, memoranda prepared to the Office of the Solicitor General——

Mr. HATCH. The fishing expedition you are asking for?

Mr. DURBIN. Pardon me?

Mr. HATCH. You mean, the fishing expedition you want to have?

Mr. DURBIN. The Senator may characterize it as he chooses.

Mr. HATCH. I do characterize it as such.

Mr. DURBIN. Have you said the memoranda we are seeking in order to understand the jurisprudential philosophy of this nominee has not been produced except in those instances where it has been leaked or other instances where we have questions related to ethical considerations?

And is the Senator not aware of the fact that I am holding in my hand a memorandum from Frank Easterbrook to the Solicitor General relative to the Bork nomination, produced for the Senate Judiciary Committee, relating not to an ethical case but rather to a civil rights case, and that it is in a category that the Senator from Utah has said, categorically, this evening, has never been produced; namely, a recommendation for an amicus brief participation?

Is the Senator from Utah aware that the very brief and memorandum which he said has never been produced was, in fact, produced to the Senate Judiciary Committee during the Bork nomination? And I hold a copy in my hand.

Mr. HATCH. I do not think the Senator knows that came from the Bork matter. I don't think you can make that claim.

Mr. DURBIN. That is exactly where it came from.

Mr. HATCH. Let me answer the question, and let me address some of the specific examples my Democratic colleagues have represented as precedent for their demand.

One, of course, is Frank Easterbrook, who is a judge on the Seventh Circuit Court of Appeals, which the Senator is raising. The Democrats' mere possession of a single memorandum—a 2-page amicus recommendation that Mr. Easterbrook wrote as an assistant to the Solicitor General—does not suggest that the Justice Department waived any privileges or authorized it to be disclosed. It did not.

The official record of the Easterbrook confirmation hearing contains no references to this document. There is nothing in the hearing that shows a reference to it, at least as far as I know. And I am quite sure about that.

After comprehensively reviewing its files, the Justice Department concluded that it never authorized the document's release.

Now, last fall, I sent a letter to Senator SCHUMER, and then to Senator LEAHY, specifically asking for information about how the Democrats obtained this memorandum that the Senator has been waving here, with impunity, by the way. To this day, I have not received a response to my question.

There is probably a very good reason for it because he should not have that memorandum. I do not know how they got it.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Not yet.

That single document provides no precedent for the Democrats' sweeping request for every document Mr. Estrada ever prepared on appeal recommendations, certiorari recommendations, and amicus recommendations.

Now, let me take a clear look at this. The Justice Department has no record; the hearing has no record. How is it that the Democrats have that? I can guarantee you they don't have it legally—at least I think I can guarantee that. That is the reason why I have not received a reasonable response. I haven't received any response. I would think if they had it legally, they would give me a response on it.

Mr. DURBIN. Will the Senator yield?

Mr. HATCH. I asked for it and, as ranking member of the committee, I was entitled to it. They ignored my request.

The Senator made a couple other remarks I find particularly offensive. I will get into those other remarks later. The Senator had another question.

Mr. DURBIN. Will the Senator yield for a further question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. DURBIN. The Senator is taking exception to this memorandum that the Solicitor General produced during the Bork nomination relating to an amicus. I hold in my hand a copy of the transcript of the hearings of the Committee on the Judiciary relating to the nomination of William Bradford Reynolds to be Associate Attorney General of the United States. And written within the committee hearings, you will find on page 983 a copy of a memorandum to the Solicitor General, sent by Mr. Reynolds relating to the recommendation on an amicus brief. I ask the Senator from Utah, would he like to at least modify his earlier statement that the Department of Justice has never produced a memorandum to the Solicitor General relating to amicus briefs in light of the fact that it is part of the official transcript of his committee?

Mr. HATCH. Let me answer that question. The Senate sought and received materials in the course of pursuing specific allegations that Mr. Reynolds, while Assistant Attorney General for Civil Rights failed to enforce the Voting Rights Act and Civil Rights Act—as with Mr. Civiletti, by the way. The Department's disclosure was limited to specific cases of alleged misconduct—limited.

The sweeping request by the Democrats in this matter is completely different. There have been no allegations that Mr. Estrada engaged in any improper behavior or failed to discharge his duties. Significantly, although Mr. Reynolds previously had served as an assistant to the Solicitor General, the Senate never suggested—never—that his appeal, certiorari, or amicus recommendations should be divulged. Never.

Let's just be honest here. With regard to specific allegations, if the Senators have them, bring them out, instead of asking for a fishing expedition into what could be thousands of documents that are privileged down at the Department of Justice in the Solicitor General's Office. No self-respecting Attorney General or President of the United States is going to give you those documents. How you got some of these documents, I cannot say. I am not suggesting that my colleagues have done wrong in getting these documents, but somebody gave them to them who didn't have the authorization to do it. The Justice Department did not authorize the giving of whatever documents you have. I don't care that you have them. It doesn't mean anything to me, except that it is phony in my eyes to use them and try to say we ought to have this sweeping demand for maybe thousands of documents that we don't know what is in there, but we want to be able to fish through them and see if we can find something against Mr. Estrada.

I hope one of these days my Democratic colleagues will wake up and realize how ridiculous they look on these arguments. These are terrible arguments, phony arguments, if you will.

Mr. CORNYN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. CORNYN. The Senator from Utah is well versed in the law of attorney-client privilege. I believe that earlier I asked—and I am asking for clarification now—whether even if Mr. Estrada wanted to produce the memos that the Democratic minority wishes to receive, whether he has custody of those, or whether it is the client's privilege to waive or not to waive, and the client—in this case, the Department of Justice—decided not to waive any claim to the privilege they may have on these documents.

Mr. HATCH. Mr. Estrada said he is proud of the work he did. He would personally have no real problem. He also recognizes there is a good reason not to give those documents based upon law and confidentiality and upon client-attorney work product.

This is the attorney for the American people. If we start giving his internal documents out, he cannot function—he or she, whoever it is. So, yes, I am aware of that.

I was interested that over the last weekend, the Senator from New York, who has been very vocal in his opposition to Mr. Estrada—the conservative party of New York said they didn't know enough about him—the same arguments the Democrats are using—by the way, this is almost 2 years they have been examining Mr. Estrada, going through everything they possibly can—Supreme Court briefs, all of his arguments, briefs in other cases, all kinds of other matters. They have had a full solid day of testimony and they asked written questions. Now they are complaining they don't know enough.

The conservative party of New York, as I understand it, wrote a letter to Senator SCHUMER and said: We don't know enough about you. How about giving us your internal documents with regard to these matters? Maybe he will do that. I don't know. In all honesty, no self-respecting attorney who understands this—and this includes the Solicitor General and the Attorney General—would give up his work product that he or she has been doing for clients. It would be unethical to do so. In this particular case, according to seven former Solicitors General—the only living ones to my knowledge—it would be a travesty to do it. It would undermine the very work of the Solicitor General's Office. Four of those were Democrats, three of whom I think he served.

So these arguments are really red herring, phony arguments. I don't know how they have the brazenness to keep bringing them up.

Mr. CORNYN. If the Senator will yield for a further question, in my State of Texas, as in other States that we have heard from here tonight, there is overwhelming editorial support for Mr. Estrada's nomination. Six separate newspapers have called on the Democratic leadership to stop this filibuster, including papers from Waco, El Paso, Dallas, Austin, Fort Worth, Victoria, and I believe there is another one I saw from Tyler in east Texas.

Yet we hear that Democrats come to the floor and say, in effect, that nobody cares about this issue. And in the case of the senior Senator from New York, who earlier today indicated that Democrats really should not pay much attention to this, or worry about paying a political price because no one is paying attention—well, I would like to tell you that is not true in Texas.

Let me ask the Senator from Utah, would he agree with me that whether or not people are paying attention, is that the standard we have come to expect from this institution and Members of the Senate when it comes to doing the right thing and discharging our constitutional responsibilities, when it comes to advice and consent for judicial nominees?

Mr. HATCH. That is an excellent question. There is no question that people are paying attention to this. I have been overwhelmed by Hispanic concerns, just today, all over the country. They are starting to awaken to this. One of the Hispanic nominees—most all of them will say he should not be on the court just because he is Hispanic. We would not support him just for that, but he is qualified. He made the grade. He ought to be treated like everybody else. He will make a great judge. These are Democrats speaking,

and Independents, and Republicans speaking. But editorial writers all over the country are speaking as well.

The Senator raised the Dallas News. In an editorial entitled ''Rush to Judgment: Estrada nomination has been blocked too long''—we are in the third week of this—let me read a paragraph or two:

Democrats by now are in full filibuster. Senate proceedings, as carried on C–SPAN, resemble the film Groundhog Day, where the main character has to relive the same day over and over again. Every day, it's the same thing. Democrats get up, march over to the podium, and shuffle papers and recite their main complaint with Mr. Estrada—that he is conservative, unconventional, and unapologetic. That when he had the chance to hand them the rope with which to hang him during his hearing before the Senate Judiciary Committee, he refused to hold up his end.

I think that is pretty good. Then they say:

And so they have talked and talked, in hopes that Republicans will back down. They won't. Nor should they.

I might add, in the El Paso Times, which the Senator noted—let me read one line in that:

Set politics aside, confirm a well-qualified nominee, and work for the good of the country rather than the party.

In the Austin American Statesman, to mention three Texas newspapers:

If Democrats have something substantive to block the confirmation of Miguel Estrada's confirmation to the U.S. Circuit Court of Appeals for the District of Columbia, it's past time they share it. Estrada's nomination was announced in May—

They should have said 2001, almost 2 solid years ago—

and has been held hostage since by Senate Democrats who have yet to clearly articulate their objections to it.

I ask unanimous consent that these three editorials be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows

[From the Dallas Morning News, Feb. 21, 2003]

RUSH TO JUDGMENT: ESTRADA NOMINATION HAS BEEN BLOCKED TOO LONG

There is a time for talking and a time for voting. The time is past for the U.S. Senate to talk about Miguel Estrada's nomination to the federal Court of Appeals for the District of Columbia circuit. It's time to vote.

Having emigrated from Honduras as a teenager unable to speak much English, Mr. Estrada went on to graduate magna cum laude from Columbia University and Harvard Law School, to clerk for a Supreme Court justice, to serve two administrations in the U.S. solicitor general's office, to win more than a dozen cases in the Supreme Court. In short, the 42-year-old lawyer is talented. Who knew that talent would extend to tying the Senate in knots for days on end.

Democrats by now are in full filibuster. Senate proceedings, as carried on C-SPAN, resemble the film Groundhog Day, where the main character; has to relive the same day over and over again. Every day, it's the same thing. Democrats get up, march over to the podium, shuffle papers and recite their main complaint with Mr. Estrada—that he's conservative, unconventional and unapologetic. That when he had the chance to hand them the rope with which to hang him during his hearing before the Senate Judiciary Committee, he refused to hold up his end.

Democrats haven't liked Mr. Estrada from the beginning. Part of that is due to his ideology—which is decidedly not Democratic. But part of it also has to do with the fellow who nominated him. Democrats don't relish giving President Bush one more thing to brag about when he goes into Hispanic neighborhoods during his re-election campaign next year. They are even less interested in putting a conservative Republican in line to become the first Hispanic justice on the Supreme Court.

And so they have talked and talked, in hopes that Republicans will back down. They won't. Nor should they.

Republicans certainly stalled their share of appointments during the Clinton administration. But Democrats are being shortsighted in seeking retaliation. It is precisely these sorts of narrowly motivated temper tantrums—from both sides of the political aisle—that turn off voters and make cynics of the American people. When that happens, it doesn't matter which nominees get confirmed or rejected. Everybody loses.

[From the El Paso Times, Feb. 8, 2003]

STOP THE PARTISAN DELAY; JUDICIAL NOMINATION SHOULD BE BASED ON QUALIFICATIONS

Senate Democrats, led by Minority Leader Tom Daschle from South Dakota, aren't likely to be cited for obstruction of justice. But that's in effect what they're doing by blocking Senate confirmation of Miguel Estrada for the District of Columbia-based federal appeals court. There were even hints of a filibuster.

Playing politics to keep a well-qualified nominee from being confirmed is as common as it is often destructive. And it's not peculiar to Democrats; Republicans do the same thing.

But this time it happens to be Democrats threatening to block the confirmation of an eminently qualified judicial nominee, keeping an important position from being filled in a court system that is in dire need of qualified judges.

Thankfully, threats of a filibuster don't seem to have universal support even among Senate Democrats. Sen. John Breaux, D–La., said that Estrada is ''uniquely qualified.''

Democrats oppose Estrada because they believe he is too conservative. Political philosophy can certainly be germane when talking about politicians and political parties, but it shouldn't really have any bearing on the fair administration of justice.

As Sen. Orrin Hatch, R–Utah and chairman of the Senate Judiciary Committee, said, ''I believe (Estrada) to be moderate to conservative, but I don't know. The important thing is he's qualified, and he ought to be approved.''

That's what needs to happen now. Set politics aside, confirm a well-qualified nominee, and work for the good of the country rather than the party.

[From the Austin American-Statesman, Feb. 21, 2003]

APPROVE ESTRADA NOMINATION OR DON'T—JUST GET ON WITH IT

If Democrats have something substantive to block Miguel Estrada's confirmation to the U.S. Court of Appeals for the District of Columbia, it's past time they share it. Estrada's nomination was announced in May and has been held hostage since by Senate Democrats who have yet to clearly articulate their objections to it.

Those unschooled in Washington-think—that would be most of us—are bewildered why Estrada, who worked in the Clinton administration, is now deemed unworthy to sit on the bench. So instead of clear reasons, we are treated to a sideshow involving the nominee's ethnicity. Estrada was born in Honduras, immigrated to the United States as a teenager and graduated from Harvard Law School in 1986.

Democrats and their supporters hint that Estrada may not be ''Hispanic enough''—whatever that means—while his Republican supporters note that the nominee's opponents are ''anti-Latino.'' Though vaguely amusing, the arguments have nothing to do with whether Estrada has the intellectual ability and temperament to become a judge on the second most influential court in the nation.

Competence, ability and commitment to the law are what should matter, but don't, in winner-take-all ideology fights. In any event, Democrats appear to be the same kind of ideology-driven obstructionists they accused Republicans of being when President Clinton's nominees hit confirmation roadblocks.

Though partisans may not quite see it, what is really imperiled by this judicial hostage-taking is confidence in the American court system. What we're seeing here is an ugly legal brawl in which the participants use big words instead of bottles to hit the opponents on the head.

Enough is enough. We don't expect the partisan brawl over judicial appointments to ever end, but Estrada has clocked enough time as a punching bag for Democrats. Call the vote.

Mr. HATCH. Mr. President, let me say more to my distinguished colleague who I think has raised some pretty important issues here. It is absolutely astounding to me, because I have heard the same comments: We Democrats are not worried about this; nobody is paying attention to it; we are not going to pay a political price; we do not care what we do to this Hispanic man, even though he is highly qualified—and I heard a number of Democrats admit he is highly qualified—we are just going to do this.

I call them my colleagues. Look, I have used some pretty tough language here tonight. I do not want to apologize for it because I feel deeply, but I will apologize. I feel deeply about this issue. I am fighting for this man, as all of us Republicans are. Every one of us is concerned. Every one of us wants this man to be confirmed. Every one of us wants to see justice here. Every one of us wants to stop the obstructive tactics. Every one of us wants to do what is right here. So if I have been too enthusiastic this evening, I apologize. I feel so passionate about this, so deeply about this that I can hardly stand it.

I have never seen, other than in Supreme Court nominations, this type of shabby treatment. I have never seen it before. I think I have a reputation for fairness around here. I think I have a reputation for knowing what is going on in the Judiciary Committee. I think I have a reputation for putting through the Clinton judges. I see this shabby treatment, and I cannot help but get emotionally disturbed by it. I do not know how any honest, decent person would not feel the same way.

I tell you, I feel like I am Hispanic. I am the chairman of the Hispanic task

force on our side. For 13 years I have done that, long before some believe the Hispanic people in this country were a political force. I have fought for Hispanics every day I have been in the Senate. I particularly resent this treatment. I particularly resent the fishing expeditions where they cannot come up with one reason for even wanting these privileged papers. They have not listed a specific reason. They just say: Let us cast our line out there and let us see what we can find because we do not have anything on this man and we do not want him on the court because he is appointed by a Republican President and he is a Republican himself, and he is a conservative, a Hispanic. We do not want those kinds on the Federal bench.

Mr. REID. Will the Senator yield for a question?

Mr. HATCH. That, in essence, is what this argument is all about.

Mr. REID. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. REID. Is the Senator aware that on August 24, 1987, John Bolton, the Republican Assistant Attorney General, wrote a letter to Chairman BIDEN, among other things saying:

Accordingly, we have decided to take this step of providing the committee access to responsive materials we currently possess except those privileged documents specifically described. Of course, our decision to produce these documents does not constitute a waiver of any future claims of privilege concerning other documents the committee requests or waiver of any claim over these documents with respect to the entities or persons other than the Judiciary Committee.

Mr. HATCH. Of course, Senator LEAHY put that in the RECORD I believe on February 25. Let me answer. This is a letter to Senator Thurmond.

Mr. REID. Senator BIDEN.

Mr. HATCH. The one I have is a letter to Senator Thurmond. I also have attached to that two letters to Senator BIDEN. I have a number of letters here. I understand all of these letters the distinguished ranking member of the committee has put in the RECORD.

I point out to the distinguished Senator from Nevada that all of these letters are from the Office of Legal Counsel, not the Solicitor General's Office. They refer to—

Mr. REID. But the Senator would agree the Attorney General released memos from the Solicitor General's Office in this letter. That is what it does. That is what the letter is about. Is the Senator aware of that point?

Mr. HATCH. These were responses to specific allegations—let me ask the Senator on my time, without losing my right to the floor, is the Senator aware of any specific allegations justifying the request for these records from the Solicitor General? Just answer my question. Are you aware of any specific allegations that need to be investigated from the Solicitor General's Office? If you are, I would like to know about it rather than have a fishing expedition trying to find something to murder this guy with.

Mr. REID. The Senator from Utah made a statement on this floor this evening that it is illegal to release documents relating to memos in the Solicitor General's Office, and the record is very clear it has been done before on more than one occasion.

Mr. HATCH. Mr. President, if he has a question, I will be happy to take it. Gratuitous comments are not fair.

Mr. REID. You asked me a question, and I was answering.

Mr. HATCH. I will go with that. The fact is I have not said that. At least I do not believe I said that. I said that these documents are not given. I said we have never given appeal recommendations and certiorari recommendations that were fairly requested except in cases where there were specific allegations, and then in a very limited way.

These letters are responding to Senator BIDEN's August 6 request for certain additional materials referred to in the documents from the Office of Legal Counsel, and I have not said that the Attorney General will act illegally if the Attorney General gives up documents. I suppose the Attorney General can theoretically do anything he wants to do, but he will not be acting responsibly if he gives up privileged documents that should not be given up by the executive branch.

I suspect and said earlier theoretically I suppose the Attorney General can do that if he wants to. He would not be responsible to do it under these circumstances.

Mr. REID. That is what Senator DURBIN and I have been trying to show all night. It has been done in the past.

Mr. HATCH. Let me just make another comment. Is it your desire here to trip me up in a multihour debate, or is it your desire to really find out something about Miguel Estrada you specifically know exists? If that is it, maybe I can accommodate you, I don't know. But the fact is, this is just a job of who got whom. I gotcha, Miguel Estrada, because I got a complaint that there may be in thousand of documents something that might destroy his nomination.

Am I on trial here? Is that what the Senator is doing? I will be happy to say to the Senator, I do make mistakes sometimes. But let me tell you something. Give me a reason that really is specific why the Justice Department should give you access to these thousands of pages of privileged documents that they have never given before except in specific requests and then in this case, the Office of Legal Counsel matters, not the Solicitor General.

Come on, let's be fair here. Is there a substantive reason for all of this blather on the Senate floor? Is there a substantive reason? Do we have a substantive reason to obstruct this man? Do we have a substantive reason? I have not seen an argument against him since the debate began other than the phony argument that he did not answer the questions, which the distinguished Senator from Tennessee, Senator ALEXANDER, blew away tonight.

I think that has been blown away by other Senators as well. My gosh, what is fair is fair.

Mr. REID. Could I respond to the question the Senator asked me without losing his right to the floor?

Mr. HATCH. I will recognize the Senator from North Carolina right now—excuse me, South Carolina.

Mr. REID. The Senator asked me a question.

Mr. HATCH. I did not ask the Senator a question. Well, I suppose I did, theoretically.

I would like the Senator to think about the answer.

The PRESIDENT pro tempore. Who is seeking recognition?

Mr. GRAHAM of South Carolina. Will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. GRAHAM of South Carolina. Mr. President, it is fair to say, like many other States, this nomination has not gone unnoticed by the media in my State of South Carolina—I have been called worse things than being from North Carolina. Both the Spartanburg Herald Journal and Post & Courier of Charleston have called for an end to this filibuster, and there is one aspect of the Spartanburg Herald Journal editorial I would like to ask the senior Senator from Utah about, and it goes as follows:

No reasonable Congress ought to be seeking such material—

And talking about legal memorandum written by a lawyer to a client—

as a letter from all living former Solicitors General attests. . . . They don't want those lawyers to be worrying about how their memos will impact future attempts to win judicial seats.

Does the Senator from Utah agree that if we start taking memos prepared by lawyers to their clients and bring those memos out in a fashion as to whether or not a person is qualified to serve one day in the future in the judiciary that it may change work product and it will be very bad for the Justice Department lawyers to have to be thinking about those things? Does the Senator agree this is a road none of us should want to go down?

Mr. HATCH. Seven former Solicitors General agree, four of whom are Democrats and three of whom he served with, three of whom understand whatever he did, why don't my colleagues ask them? I am sure they have in their quest to find some fish around here, and apparently they do not have any specific reasons for asking for this huge fishing expedition. But even if they did, what responsible attorney would give up his work product?

Now, let's suggest there is a Democrat President and one of our body is invited to be a member of the Circuit Court of Appeals for the District of Columbia, he decides he is sick and tired

of the Senate, mainly because of obstructive tactics like this, I am sure, and we, as Republicans, then say we are not going to let him serve until we get all of his internal memoranda while he was a Senator. Do my colleagues think he is going to give that up? He would be nuts, because we would then be able to find all kinds of rotten fish in there to use against him or her. Do my colleagues see the point?

I hope our side would not stoop to that level, and I would fight to make sure we did not stoop to that level. So I ask, where are the specific allegations? They must have talked to at least their four Democrat former Solicitors General and said, is there not something there? By the way, those Solicitors General are for Miguel Estrada, at least have said that he handled himself very well and is ethically responsible, and his performance recommendations that they signed are the highest form of recommendations. They have all said he has done that in the highest sense of the Solicitor General's Office.

So, yes, the Senator is absolutely right. Seven former Solicitors General, four of whom are Democrats, three of whom he worked with in the Clinton administration and the Bush administration.

I would like to share with my colleagues an editorial cartoon which really sums it up well. It shows one of two Democrat caricatures stating:

The makeup of the judicial system should look like America, including blacks, Asians and Latinos.

Then the other asks: What about Estrada? These are two donkeys.

The other tellingly replies: That is different. He is not a liberal.

That is what this is all about. He is not a liberal. How could we have the temerity to choose a Hispanic nominee for the Circuit Court of Appeals for the District of Columbia? How could this President do this since he is not a liberal? That is what is involved.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. Mr. President, I will ask the Senator from Utah—I first would say how effective I think he has been tonight in indicating there are no reasons to oppose this nomination. I would note that the Mobile Register in my State has a fine editorial page, and they wrote:

All precedent indicates that a filibuster against judicial nominations for any reason but one concerning the nominee's very integrity is essentially dirty pool.

My question is: Has this nominee's integrity ever been questioned and does the Senator agree that this filibuster is dirty pool?

Mr. HATCH. This nominee's integrity has never been in question. I think my colleagues on the other side have acknowledged that. His integrity is totally intact. He is an honest, decent, honorable man who, in spite of a disability, a speech impediment, has risen to the top of the legal world, who is a partner in one of the major law firms in this country, who has the highest rating of the American Bar Association, unanimous, well-qualified rating. This man's integrity has never been called into question, to my knowledge, and I would be very ashamed of anybody who tried to call his integrity into question.

I have been very passionate this evening, and I apologize to my colleagues if I have offended anybody, but I have to say this is really important stuff. We cannot allow this type of treatment to go on. We are talking about a breakdown in the Senate, if a filibuster for the first time in history is maintained to defeat a nominee, any nominee, let alone the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia. I have not wanted to antagonize or offend any of my colleagues, and I apologize if I have, but what I have said tonight is true.

I have to say, I am really disturbed by the obstructive tactics that are being used. I would be equally upset if they were used on our side, but they have not ever been used in this fashion on our side.

I see the majority leader is in the Chamber, but first I forgot to put these letters in earlier, my letter to Senators LEAHY and SCHUMER, with regard to the Easterbrook document. I ask unanimous consent that they be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 1, 2002.

Hon. CHARLES E. SCHUMER,
U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATOR SCHUMER: Thank you for chairing last Thursday's hearing on the nomination of Miguel Estrada to the United States Court of Appeals for the District of Columbia Circuit. I write to seek your clarification on a matter which you raised at the hearing.

You reiterated your belief that the Department of Justice should turn over certain appeal, certiorari and amicus recommendations that Mr. Estrada authored when he served as an Assistant to the Solicitor General. As precedent for this request, you noted that during the nomination of Judge Frank Easterbrook to the Seventh Circuit Court of Appeals, similar memos were turned over to the Committee. You produced those documents and placed them into the hearing record. When Republican staff requested copies of the documents, only one of the three documents we received appeared to pertain to Judge Easterbrook. That document consists of a two-page memorandum referencing another memorandum prepared by someone else.

At the hearing, you did not explain whether the Committee had ever formally requested this document, or the other two documents, from the Department of Justice, or whether the Department of Justice consented to their disclosure. The written record of Judge Easterbrook's hearing contains no such documents, or even a mention of them. So that the record of Mr. Estrada's hearing is as complete as possible, please advice whether you have any information that the Committee requested these documents from the Department of Justice and whether the Department consented to their disclosure to the Committee. If the documents were neither requested of nor produced by the Department of Justice, please indicate the manner in which the Committee came to possess them.

Thank you for your prompt attention to this matter. I look forward to your response.

Sincerely,

ORRIN G. HATCH,
Ranking Republican Member.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 10, 2002.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY: On October 1, I sent a letter to Senator Schumer seeking clarification of questions about certain documents that he submitted for the record at Miguel Estrada's confirmation hearing. These documents consisted of memoranda that Senator Schumer stated were provided to the Committee by the Department of Justice during the nomination of Judge Frank Easterbrook to the Seventh Circuit. Senator Schumer cited these documents as precedent for your request that the Department release to the Committee appeal, certiorari and amicus recommendations that Mr. Estrada authored when he served as an Assistant to the Solicitor General.

When Republican staff requested copies of these documents, however, only one of the three documents provided appeared to pertain to Judge Easterbrook. That document consists of a two-page memorandum referencing another memorandum prepared by someone else. The written record of Judge Easterbrook's hearing contains none of the three documents, or even a reference to them.

Enclosed is a copy of my letter to Senator Schumer, which seeks clarification of whether the Committee requested these documents from the Department of Justice in connection with Judge Easterbrook's confirmation and whether the Department consented to their disclosure to the Committee. It also asks for an explanation of the manner in which the Committee came to possess the documents in the event that they were neither requested of nor produced by the Department of Justice.

Yesterday, Senator Schumer's office advised my staff that the full Committee provided him with the documents at issue and, for this reason, he is deferring to you for a response to my letter. I look forward to hearing from you, particularly in light of the October 8 letter of Assistant Attorney General Dan Bryant, which stated the Department's conclusion that it did not authorize the release of the Easterbrook memorandum.

Sincerely,

ORRIN G. HATCH,
Ranking Republican Member.

Mr. REID. Mr. President, I have a unanimous consent request.

Mr. FRIST addressed the Chair.

Mr. REID. I have a unanimous consent to make and ask if the majority leader would yield for that unanimous consent request.

Mr. FRIST addressed the Chair.

The PRESIDENT pro tempore. The majority leader has the floor.

Mr. REID. Of course he does.

Mr. FRIST. Mr. President, as we have for the past 3 weeks, my Republican

colleagues, as we can see from the Chamber now, and I have stood ready to debate the Estrada nomination. Few of our Democrat colleagues have been present tonight, although we clearly stand ready to vote on this nomination. It appears that most of our colleagues in the minority are prepared neither to debate nor to vote on Miguel Estrada. Tonight my colleagues have shed light on the immense reaction from newspapers all over the country to the obstruction of this nomination. Tonight my colleagues have shed light on the fact that the peculiar and truly unprecedented obstruction the minority is pursuing is founded upon a double standard which is being applied to this particular nominee. Tonight we have made clear once again that obstruction is being played out in the Senate by a minority that appears far from the mainstream of opinion throughout this country.

I ask unanimous consent that the vote occur on the confirmation of the nomination of Miguel Estrada at midnight tonight, provided further that the time between now and then be equally divided between the chairman and ranking member or their designees, and that at midnight the Senate proceed to a vote on the confirmation of the nomination with no intervening action or debate.

Mr. DASCHLE. Mr. President, I ask unanimous consent that the request made by the majority leader be modified to include that the Justice Department provide the requested documents relative to Mr. Estrada's Government service, first requested in May of 2001; that the nominee then appear before the Judiciary Committee to answer the questions which he failed to answer in his confirmation hearing, and any additional questions that may arise from such documents.

Mr. FRIST. Reserving the right to object to that request for modification, let me cite a sample of editorials and what they say about my distinguished friend's request with regard to these memoranda. Just a couple.

From the Redding Record Searchlight in California from February 15: The administration won't hand over memos he wrote when he was in the Solicitor General's Office, say the Senate Democrats. It apparently does not matter to them that publicizing them could rob future memos of their candor and that every former Solicitor General of either party has said the Democrats seek too much.

Just one other from the Detroit News, February 11, 2003: Democrats also demanded that he produce his memos and recommendations while he was in the Solicitor General's Office, which had never been done for any other candidate who had been an assistant in that office. The demand was rejected not only by Estrada but by every former Solicitor General still living, including those who served Democratic Presidents.

I reject the request for modification.

Mr. DASCHLE. Then I object, as well.

The PRESIDENT pro tempore. The objection is heard.

Mr. FRIST. As I said, tonight my colleagues have addressed all the many obstacles that have been put forward by the minority one by one by one by one through a series of questions handled so ably by our chairman of the Judiciary Committee, a nomination that the President of the United States sent to this Senate 2 years ago. Thus, I modify my request so that each Member on the other side of the aisle would be permitted to speak for up to 1 hour on the nomination prior to a vote.

The PRESIDENT pro tempore. Is there objection?

Mr. DASCHLE. Mr. President, I again ask unanimous consent that the request made by the majority leader be modified to allow for the documents requested by the Judiciary Committee members be provided as a part of the hearing record and that additional questions proposed by Judiciary Committee members be included in the RECORD at that time.

Mr. FRIST. Mr. President, in response to the motion, let me cite another sample editorial. Again, it has been fascinating to watch the editorials over the last 2 weeks.

The PRESIDENT pro tempore. Is there an objection?

Mr. DASCHLE. Mr. President, I will ask for regular order. We can debate this if the majority leader wishes, but this is a unanimous consent request.

The PRESIDENT pro tempore. Is there an objection?

Mr. FRIST. Mr. President, I object to the request for the modification.

Mr. President, I have tried, as you can see, on numerous occasions to reach an agreement for something very simple, and that is an up-or-down vote on this qualified nominee. Once again, there has been an objection from the other side of the aisle. It is time to allow the Senate to work its will on this nomination, the will of the Senate.

We are here, as you can see, ready to vote.

Mr. DASCHLE. I was under the impression I made the objection, but of course if I did not, I do it again.

The PRESIDENT pro tempore. The objection is heard.

Mr. FRIST. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll, and the following Senators entered the Chamber and answered to their names:

[Quorum No. 2 Ex.]

Allard	Durbin	Lugar
Bayh	Frist	Pryor
Daschle	Hutchison	Reid
Dorgan	Leahy	

The PRESIDENT pro tempore. A quorum is not present. The clerk will call the names of absent Senators.

The assistant legislative clerk resumed the call of the roll.

Mr. FRIST. I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays.

The PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDENT pro tempore. The question is on agreeing to the motion of the Senator from Tennessee. The yeas and nays were ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Nebraska (Mr. HAGER), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Mexico (Mr. BINGAMAN), the Senator from West Viginia (Mr. BYRD), the Senator from Delaware (Mr. CARPER), the Senator from North Dakota (Mr. CONRAD), the Senator from North Carolina (Mr. EDWARDS), the Senator from California (Mr. FEINSTEIN), the Senator from Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Hawaii (Mr. INOUYE), the Senator from Vermont (Mr. JEFFORDS), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), the Senator from Louisiana (Mr. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Rhode Island (Mr. REED), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Maryland (Mr. SARBANES), and the Senator from Oregon (Mr. WYDEN) are necessarily absent

The PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 73, nays 1, as follows:

[Rollcall Vote No. 36 Ex.]

YEAS—73

Akaka	Daschle	Lincoln
Alexander	Dayton	Lott
Allard	DeWine	Lugar
Allen	Dodd	McCain
Baucus	Dole	Miller
Bayh	Domenici	Murkowski
Bennett	Dorgan	Murray
Bond	Durbin	Nelson (FL)
Boxer	Ensign	Nelson (NE)
Brownback	Enzi	Nickles
Bunning	Feingold	Pryor
Burns	Fitzgerald	Reid
Campbell	Frist	Roberts
Cantwell	Graham (SC)	Santorum
Chambliss	Grassley	Schumer
Clinton	Gregg	Sessions
Cochran	Hatch	Shelby
Coleman	Hutchison	Smith
Collins	Inhofe	Snowe
Cornyn	Kohl	Specter
Corzine	Kyl	Stabenow
Craig	Leahy	
Crapo	Levin	

Stevens	Talent	Voinovich
Sununu	Thomas	Warner

NAYS—1

Breaux

NOT VOTING—26

Biden	Hagel	Lautenberg
Bingaman	Harkin	Lieberman
Byrd	Hollings	McConnell
Carper	Inouye	Mikulski
Chafee	Jeffords	Reed
Conrad	Johnson	Rockefeller
Edwards	Kennedy	Sarbanes
Feinstein	Kerry	Wyden
Graham (FL)	Landrieu	

The motion was agreed to.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, once again, I state that we are ready to vote on this nomination tonight. As you can see, the nomination has been pending in the Senate since February 5. We have had speech after speech after speech on this qualified nomination. There has been ample time for both sides to make their case. As has been said on the floor by the minority whip, everything has been said.

Mr. President, I now ask unanimous consent that the vote occur on the confirmation of the nomination of Miguel Estrada at 6 p.m. on Monday.

The PRESIDENT pro tempore. Is there objection?

Mr. DASCHLE. Mr. President, reserving the right to object, I ask unanimous consent documents requested by members of the Judiciary Committee, as well as answers requested by Members to Mr. Estrada, be made part of the request as well.

The PRESIDENT pro tempore. Is there objection?

Mr. FRIST. Mr. President, I object to the requested modification.

Mr. DASCHLE. Mr. President, then I object as well.

The PRESIDENT pro tempore. Objection is heard.

Mr. FRIST. Mr. President, I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll and the following Senators entered the Chamber and answered to their names.

[Quorum No. 3 Ex.]

Baucus	Corzine	Frist
Bayh	Daschle	Leahy
Boxer	Durbin	Nelson (FL)
Breaux	Feingold	Pryor
Clinton	Feinstein	

The PRESIDING OFFICER (Mr. SMITH). A quorum is not present.

Mr. FRIST. Mr. President, I move that the Sergeant at Arms be instructed to request the attendance of absent Senators, and I ask for the yeas and nays on the motion.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the majority leader. The yeas and nays are ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FRIST. I announce that the Senator from Rhode Island (Mr. CHAFEE), the Senator from Nebraska (Mr. HAGEL), the Senator from Mississippi (Mr. LOTT), and the Senator from Kentucky (Mr. MCCONNELL) are necessarily absent.

Mr. REID. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from New Mexico (Mr. BINGAMAN), the Senator from West Virginia (Mr. BYRD), the Senator from Delaware (Mr. CARPER), the Senator from North Dakota (Mr. CONRAD), the Senator from North Carolina (Mr. EDWARDS), the Senator from Florida (Mr. GRAHAM), the Senator from Iowa (Mr. HARKIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Vermont (Mr. JEFFORDS), the Senator from South Dakota (Mr. JOHNSON), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Massachusetts (Mr. KERRY), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Rhode Island (Mr. REED), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Maryland (Mr. SARBANES) and the Senator from Oregon (Mr. WYDEN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 74, nays 1, as follows:

[Rollcall Vote No. 37 Ex.]

YEAS—74

Akaka	DeWine	McCain
Alexander	Dodd	Miller
Allard	Dole	Murkowski
Allen	Domenici	Murray
Baucus	Dorgan	Nelson (FL)
Bayh	Durbin	Nelson (NE)
Bennett	Ensign	Nickles
Bond	Enzi	Pryor
Boxer	Feingold	Reid
Brownback	Feinstein	Roberts
Bunning	Fitzgerald	Santorum
Burns	Frist	Schumer
Campbell	Graham (SC)	Sessions
Cantwell	Grassley	Shelby
Chambliss	Gregg	Smith
Clinton	Hatch	Snowe
Cochran	Hollings	Specter
Coleman	Hutchison	Stabenow
Collins	Inhofe	Stevens
Cornyn	Kohl	Sununu
Corzine	Kyl	Talent
Craig	Leahy	Thomas
Crapo	Levin	Voinovich
Daschle	Lincoln	Warner
Dayton	Lugar	

NAYS—1

Breaux

NOT VOTING—25

Biden	Harkin	Lott
Bingaman	Inouye	McConnell
Byrd	Jeffords	Mikulski
Carper	Johnson	Reed
Chafee	Kennedy	Rockefeller
Conrad	Kerry	Sarbanes
Edwards	Landrieu	Wyden
Graham (FL)	Lautenberg	
Hagel	Lieberman	

The motion was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, once again we were unable to reach an agreement on the vote for the confirmation of the nomination of Miguel Estrada. I want to thank all of the Members who have participated tonight in what is an important debate. We have had constructive debate through the evening and Members have made themselves available to vote on the Estrada nomination. Unfortunately, given the objections from the other side of the aisle, we will not be allowed to vote on this nomination at this time. Therefore, there will be no further rollcall votes tonight.

I know a number of my colleagues have statements they wish to make, and I encourage them to remain in the Chamber and continue to debate this evening, even though the hour is late. I do want to notify our colleagues that we will convene at noon tomorrow and will continue to debate the Estrada nomination at that time.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Mr. President, anybody who might have been watching the debate this evening has to come to the realization that we are in a filibuster. Personally, I am very concerned about the kind of precedent it is going to set for this body as we move forward in future years. I think that forcing 60 votes in order to get to a vote up or down on a judicial nominee is a very difficult position to put this body in. I am disappointed that we were not able to get a straight up-or-down vote this evening on Miguel Estrada to the Court of Appeals for the District of Columbia.

I realize that watching the Senate on television is probably not the most popular pastime for many Americans, but it should come as no surprise to any of my colleagues or students of Congress that the current debate and unprecedented filibuster over the confirmation of Miguel Estrada, President George W. Bush's nominee to the DC Circuit Court, has citizens from across the country tuning in and paying close attention. From California to Colorado to New York and beyond, Americans have closely watched the DC Circuit Court confirmation, because they realize that justice is not issued by an individual court or judge, but rather collectively, the integrity of the law depending on the ability of each court to function within the whole.

In the midst of the Democrat-led filibuster, the Senate finds its business completely disrupted, unable to proceed to other important issues such as prescription drugs and economic relief. The Constitution commands that Federal judges are to be appointed with the advice and consent of this body. Yet today, thanks to the obstructionist tactics of the Democratic leadership, we face a very real possibility of shifting this authority in a manner the Framers never intended, fundamentally altering the amount of votes required to confirm judicial nominations.

It is clear that the obstructionists are not interested in an up-or-down

vote on this nomination. Instead, they prefer to hold the majority and the American people hostage to an unacceptable game of entrenchment and politics. Their reasons to prolong debate may be enough to justify a vote against Miguel Estrada, but I am still waiting for a reason that is sufficient to deny a vote entirely.

Television programs, talk show radio, and newspaper editorials across the United States are demanding that the Democrats allow a vote on Miguel Estrada, that they proceed to a simple up-or-down vote.

The media is simply echoing the statement of an outraged public. They have rejected this tyranny of the minority, and their demand for a vote must be acknowledged. The call for a vote has reached the editorial pages of both major newspapers in Colorado. The Rocky Mountain News, in an editorial entitled ''Democrats Turn Ugly on Estrada,'' states the filibuster is irresponsible. Their editorial also undermines many of the various arguments that are being used to prolong the confirmation, saying the arguments that we do not know enough about Miguel Estrada is implausible because he has a well-known and rather amazing life story. Estrada immigrated to this country from Honduras, graduated with honors at Columbia College, and was editor of the Law Review at Harvard Law School. Then he was a clerk to a Supreme Court Justice and argued before the Supreme Court 15 times. He received the highest possible recommendation of the American Bar Association.

The editorial concludes:

The Democrats have no excuse . . . keeping others from voting their consciences on this particular matter is simply out of line.

I ask unanimous consent that the article by the Rocky Mountain News be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Rocky Mountain News, Feb. 14, 2003]

DEMOCRATS TURN UGLY ON ESTRADA

Miguel Estrada is—oh—a conservative, and if that makes your heart pound with fear you may very well be a U.S. Senate Democrat. Then you may also be among those trying to thwart the Senate's majoritarian decision-making with a filibuster.

It's irresponsible, this hysteria being acted out to keep Estrada from serving on the U.S. Court of Appeals for the District of Columbia. But Democratic senators do have their excuses, each more petty than the next.

One excuse is that they don't know enough about Estrada—implausible because there's a well-known and rather amazing life history here: Estrada immigrated to this country from Honduras, graduated with honors at Columbia College, was editor of the Law Review and Harvard Law School, a clerk to a Supreme Court justice, argued before the Supreme Court 15 times, and received the highest possible recommendation of the American Bar Association.

Opponents of Estrada are piqued because he stayed true to a widely endorsed tradition of refusing to indicate how as a judge he might decide cases that could come before him. Instead, Estrada merely said he would be an impartial judge loyal to the law.

The Democrats have no excuse (although it's clear they fear Estrada would be in line for a Supreme Court nomination if he gets this other judgeship first). If liberals in the Senate think conservative will spell the end of civilization if they become judges, they can vote against Estrada. But keeping others from voting their consciences on this particular matter is simply out of line.

Mr. ALLARD. The News is not the only newspaper to decry the treatment of the President's nominee. The Denver Post, which, by the way, endorsed Al Gore over George W. Bush for President, in an article captioned, ''Give Estrada His Day in Court,'' states those Senators who think Estrada is too conservative should vote no. Those who think he was unresponsive should vote no. The key point is there should be a vote. To do otherwise, to use a filibuster, is to impose a new requirement that judges be confirmed by a supermajority.

The paper agrees the Constitution never intended such a requirement and that an up-or-down vote is in order.

I ask unanimous consent that the Denver Post editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Denver Post, Feb. 13, 2003]

GIVE ESTRADA HIS DAY IN COURT

Something quite unprecedented is taking place on the floor of the U.S. Senate. The Democratic minority is staging a filibuster against the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals.

It is the first time in the history of the Senate that a filibuster has been used against a circuit court nominee.

Under Senate rules, at least 70 senators must agree to shut off debate, and the Democratic leadership says it has sufficient votes to keep the Estrada nomination from being voted upon.

Judicial nominations have always been controversial, and Senate Democrats have said they harbor resentments over the way Republican-controlled Senates of the past treated nominees of Democratic presidents.

The debate on the Senate floor this time clearly indicates this is more than a case of tit for tat. The acrimony in the debate over Estrada suggests the Democrats think they have a winning issue in opposing him on grounds that he is too much of an unknown quantity, that he failed to properly answer their questions and that he may just be ''too conservative'' for the D.C. Circuit. They are willing to risk the criticism that they are opposing a highly qualified Hispanic attorney who is a picturebook example of an immigrant pursuing the American Dream.

There is no question that Estrada is an attractive nominee. His academic and legal credentials are outstanding, and although he lacks judicial experience, so too did a majority of those now sitting on the D.C. circuit.

The key issue is whether a filibuster should ever be employed to defeat a judicial nominee. We think not. Those senators who think Estrada is too conservative should vote no. Those who think he was unresponsive should vote no. Those who have a beef with the Bush administration for whatever reason should vote no.

The key point is that there should be a vote. To do otherwise, to use the filibuster, is to impose a new requirement that judges be confirmed by a supermajority. The Constitution has no such requirement. It simply says that judges are appointed with the advice and consent of the Senate. That implies an up-or-down vote. A filibuster should play no part in the process.

Mr. ALLARD. Another article that appeared in the Denver Post was written by Al Knight, which states that if the obstructionists succeed, there will only be two kinds of nominees in a Republican administration: Those who can be opposed because they have said something suspect about a touchy topic, and known conservatives who have not said anything inappropriate. The second category can be opposed, however, precisely because they have not furnished their opponents with a basis for opposing their nomination. The article concludes that the Estrada filibuster is a lamentable departure from the past.

I ask unanimous consent that the Al Knight article be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Denver Post, Feb. 16, 2003]

CONFUSING POLITICS WITH PRINCIPLE

(By Al Knight)

Senate Minority Leader Tom Daschle claims he and his Democratic colleagues are compelled by principle to torpedo the nomination of Miguel Estrada to the D.C. Circuit Court of Appeals.

No one who has closely followed recent events could possible believe him. What has been happening in the U.S. Senate is not about principle; it is about one-issue politics, specifically the politics of abortion.

For the first time in history, a filibuster is being used to stop the nomination of a circuit court judge.

The use of a filibuster for this purpose is especially pernicious because it effectively imposes a supermajority requirement on the Estrada nomination whereas the U.S. Constitution requires only a simple majority.

Daschle and others of like mind have done everything to avoid discussing this simple fact. Not one of the Democrats opposing the Estrada nomination has bothered to address the question of why his defeat is worth greatly politicizing every future court nomination. They instead have taken to the Senate floor to talk about every topic under the sun except that one.

To the degree that a central theme has developed, it is this: Miguel Estrada has failed to provide his opponents with a sound basis on which to oppose his nomination. Think about that! Under this method of judicial confirmation, there will be only two kinds of nominees in a Republican administration: those who can be opposed because they have said something suspect about abortion or some other touchy topic and known conservatives who have not said anything inappropriate. This second category can be opposed, however, precisely because they haven't furnished their opponents with a basis for opposing their nomination.

Recent viewers of C–SPAN know just how ugly this fight has become and how it may yet poison the ability of the two major parties to cooperate on other matters.

The truth is that Estrada's great crime is he has refused to worship at the altar of the Roe vs. Wade decision and has simply said that he recognizes it as law.

That, it is now apparent, is not good enough for the Democrats. Daschle has essentially said the party cannot permit a

nomination to go forward for someone who refuses to cooperate in his own mugging.

Democrats continue to insist that there is something extraordinary about the Justice Department's refusal to make available a wide variety of internal memos written by Estrada during his five years in the solicitor general's office. The fact that all seven living solicitors general oppose the release of such confidential documents seems not to matter. The Democrats have seized upon this issue as though it were the only lifeline available, but it is a very slim reed, indeed.

Republicans—and at least one Democrat, John Breaux of Louisiana—have said over and over again that if a Democratic senator doesn't like Estrada and thinks he would be a poor addition to the federal bench, the proper thing to do is to vote ''no.'' The Constitution, it has been pointed out, anticipates a Senate vote on all nominations.

The GOP, which is nowhere near as good as the Democratic Party in a streetfight, is obviously hoping that it will become apparent to the public over time that it has the best of this argument and that the use of a filibuster to defeat a judicial nominee would be a terrible precedent.

That hope can only be realized, however, if the American public takes proper notice of this fight and recognizes what is at stake. But some of the coverage it has attracted is simply inaccurate. The New York Times, for example, said the filibuster resembles those of the past.

That characterization, which makes matters sound more romantic than they are, is exactly backwards. The Estrada filibuster, in fact, is a lamentable departure from the past. That is why this is a fight the GOP had better win.

Mr. ALLARD. Mr. President, challenging times are at hand. While I believe a full and fair debate of Presidential nominees is of paramount importance, obstructing an up-or-down vote fails the public trust and is a disservice to our system of justice. The Senate must resist temptations to alter the basic tenets of the Constitution. Instead, the Senate must move forward with the business of the Nation and can start by voting on the nomination of Miguel Estrada.

Again, we ought to look at the chart and remind ourselves of the key point in the editorials. The Denver Post said: The key point is that there should be a vote. . . . A filibuster should play no part in the process.

The Rocky Mountain News says: The Democrats have no excuse for keeping others from voting their consciences on this particular matter. It is simply out of line.

I yield the floor.

The PRESIDING OFFICER (Mr. CRAIG). The Senator From Alabama.

Mr. SESSIONS. Mr. President, I watched with great interest the debate tonight. Senator HATCH answered every question relating to this nominee. It reminds me of the times when I was a Federal prosecutor years ago. You would go through a contentious trial and the defendant attacked the prosecutor, would attack the police, and attack the witnesses. But at the end of the trial, the evidence would be clear and you would have a real fine moment to stand up and challenge the defendant to produce any credible evidence that would justify his position.

Senator HATCH repeatedly challenged our colleagues on the other side of the aisle. He urged them and pleaded with them to state a legitimate basis to reject this fine nominee, Miguel Estrada. They have failed to do so. They came up with the weakest, most pitiful, sorry explanation; that is, they want memorandums, every memorandum he ever wrote in the Justice Department.

That is so weak, so baseless, so wrong. That is something he cannot give. It is not within his power to give. And he should not do it if he had the power to do so. The memorandums he produced for the Department of Justice belong to the Solicitor General, to the Department of Justice, to the people of the United States. The United States of America was his client. He has no ability whatsoever to produce those documents.

He said they can have them as far as he is concerned. But as a good lawyer, he knows the Department of Justice should not and must not produce those documents. And they have never done that absent a specific showing of a specialized need.

It is sad to me to see us get to this point, to see this kind of obstructionism. This is what we have seen. It is not fair to this nominee. It is not fair to the judicial system.

I call on my colleagues across the aisle, and I urge them not to make this historic step, not to head down this road of filibuster. It is something we have not done before, we should not do now, and by all means we should not do this to a nominee who has not the slightest bit of a challenge to his integrity, not the slightest challenge to his legal ability, not any objection by the American Bar Association. In fact, they rated him the highest possible rating they can give and unanimously gave him that rating. It is really a sad day.

If Senator HATCH was frustrated, so are a lot of us. What has been going on here is not right. It is not right. We need to stop it. The Constitution of the United States provides that confirmations are advice and consent of the Senate, article II, section 2, by a majority vote. That is what it has always been. Now we are trying to convert that to a supermajority of 60 votes. It is something we have not done before.

They say: You held up President Clinton's nominee. Let me state plainly, we did not unfairly hold up any nominees. We confirmed, under President Clinton's tenure as President, 377 of his nominees. One of those nominees was voted down on this floor; 377 confirmed. Not once was there a filibuster held. In fact, when people talked about that a few times, Senator HATCH said no, that is not the right thing to do. We ought not to filibuster. That did not occur. We went on anyway and confirmed those judges. There were only 41 nominees left when President Clinton left office of those he nominated who were not confirmed; whereas when former President Bush left office there were 54 nominees unconfirmed by the Democratic Congress. So compared to those two Congresses, there is no doubt that the Republican Congress under Senator HATCH as chairman did a much more favorable job to President Clinton's nominees than the Democratic Senate did to President Bush's nominees. That cannot be disputed.

It is amazing we are carrying on and suggest otherwise. Sure, the Senate is not a rubberstamp. Sure, it has a right to ask questions and demand information that is legitimate. But they are not required and should not ask for information that is not legitimate.

How did we get into this circumstance? How did we get to this point where the ground rules have changed, that we are into an obstructionist tactic, an unfair procedure? What happened? After the last election when President Bush was elected, the New York Times reported that the Democrat majority, the Democratic Senators at that time early in President Bush's administration had a retreat at some location unknown to me, and they heard at that time from three liberal law professors, Lawrence Tribe, Cass Sunstein, and Marcia Greenburger. These liberal professors at this private retreat told the Democrats at that time, they should change the ground rules for nominations. They should ratchet up the pressure and they should alter the historic rules of courtesy, the historic presumptions in the Senate, and they should change how nominees are treated. They said: You have the power to do it. Do it, Democrats. Stand up and block these nominees. Do not accept the nominees from President Bush, like this Republican Senate accepted President Clinton's nominees. Fight every step of the way. That is apparently what has happened.

Shortly after that, when the majority in the Senate changed, I served on the Administrative Oversight and the Courts subcommittee. Senator SCHUMER chaired that subcommittee. He held hearings. He held hearings to argue the point that the burden of proof for a confirmation of a judge should change and it ought to be on the judge to prove he is qualified. That has never been done before in the history of this country. We had Lloyd Cutler, former Counsel to the White House of Democrat Presidents. We had others testify. They testified that it would be wrong to shift the burden to the nominee, it was not the right thing to do. Then he had hearings to say we ought to just consider your politics, your ideology, as he said, and we can consider somebody's politics, and we can reject them if we do not agree politically.

If you happen to be pro-life, you are out. Pro-life, no. No such judge gets confirmed here, I suppose that means. So we went through those hearings. Lloyd Cutler and Boyden Gray headed up a national commission that studied this and the commission rejected this contention. They both said this would

not be the right thing to do; they said no, this would politicize the judiciary.

Most of the people who serve here who are lawyers may not regularly have practiced law. I had the opportunity and the honor for almost 12 years to represent the United States of America as U.S. attorney, practicing in Federal court before Federal judges. I practiced before Democratic judges. I practiced before Republican judges. It did not matter to me which one it was. You presented the law and the facts consistently and you would expect them to rule justly. That is what we try to do.

We knew when we researched the law that we were going to win—we thought. If we had the right law, we would expect to win. Politics does not enter into it. That is the ideal of American justice, that there is equal justice under law. It is on the Supreme Court wall here, on the facade of the Supreme Court across the street, ''Equal Justice Under Law.''

So I am really frustrated that we would suggest we ought to get into a person's politics.

Of course, with regard to Estrada, to my knowledge, he never campaigned for a candidate. To my knowledge, he has never run for office. It appears he is a Republican and he has conservative political views, but as he has explained, they do not affect his abilities and his decision-making process once he puts on that robe and gets in the courtroom. That is not the way he does business, and that is not the way a judge should do business.

I think we are doing something here that is quite historic and is very wrong.

I will say one more thing before I refer to some of the comments that were made earlier about Solicitor General memoranda. Remember, Miguel Estrada is a highly qualified nominee. He graduated magna cum laude from Columbia University after having come to this country at age 17 from Honduras. He went on to Harvard Law School. He finished at the top of his class there, magna cum laude, and was chosen an editor of the Harvard Law Review.

Those of us who are lawyers and those of us who know much about the legal business know that being an editor of a law review at a good law school is one of the highest honors a graduating senior can have. To be an editor of the prestigious Harvard Law Review is one of the great honors any student can have.

After graduating from college, he clerked for a Federal appellate judge in the Second Circuit Court of Appeals, one of the great courts of appeals in America. He did that, served his tenure there. Let me say, those are very competitive positions. You are not chosen to be a law clerk for a court of appeals judge or even a Federal district judge unless you have extraordinary ability and are perceived to be a person people can get along with, pleasant to work with, and have great ability. So he did that.

Remember, he is being nominated for a Federal court of appeals judge. He will do the very same work on the Court of Appeals for the DC Circuit as he would did at the Second Circuit Court of Appeals in New York, as he did there. So he has had great experience sitting at the right hand of a Federal circuit judge, helping him write the opinions dealing with the Federal issues that come before him. I think that is important.

After that, he became an assistant U.S. attorney in the Southern District of New York, a very prestigious U.S. attorney's office, the one in which Rudy Guiliani was U.S. Attorney and ran that office. By the way, Rudy Guiliani has written a very vigorous editorial supporting Miguel Estrada.

He performed superbly there and was taken to the Department of Justice. He was asked to serve as a deputy in the Solicitor General's Office of the United States Department of Justice. The Solicitor General is often referred to as the people's lawyer. The Solicitor General has been called the greatest lawyer's job in the world. The Solicitor General of the United States of America represents the United States of America in court before the Supreme Court of the United States of America. Most lawyers can think of no greater honor, nor can I, than to be able to represent the United States of America before America's greatest Court.

He served there. He came in the tail end of 1992, in the Bush administration, and stayed for 5 years in the Clinton administration. During that time the Clinton administration evaluated his performance. In every possible evaluation, they gave him the highest possible rating. It was not President Bush's administration, not some other Republican administration; the Clinton administration Department of Justice gave him the highest possible performance evaluation.

Then he left there and went to a great law firm, one of America's greatest law firms. He has argued 15 cases before the United States Supreme Court. Let me tell you, I asked a lawyer earlier tonight, we were sitting at a round table, and I said, How many lawyers in America do you think have argued 15 cases before the Supreme Court?

He said, You know, I bet they could all sit at this table. I suggest to you, you could count on your fingers the names of the practicing lawyers today, in practice today, who actually have argued that many cases. Arguing a case before the Supreme Court is a great honor. Very few people get selected. It is big time law business. Only the best are asked to do that. And he has done that 15 times.

That shows that in private practice he has the ability and the respect to carry on weighty matters before the Nation's highest Court.

So the American Bar Association comes along. They are asked to evaluate this nominee, to see how well the lawyers and bar members and all, evaluate his performance. They talk to lawyers who have practiced with him. They talk to the lawyers who have opposed him in his biggest cases. They talk to judges before whom he has practiced. They talk to lawyers for whom he has worked. And they ask people confidentially, also, to express their opinion if they know of anything that affects his integrity, legal ability, temperament, and those kinds of matters. They take it very seriously. They particularly take a court of appeals nomination very seriously.

So they did all that for Miguel Estrada. They checked his background. They probably talked to his law professors and the judges he worked for and lawyers he litigated against as well as with. They evaluated him, and 15 or so of them came together and voted, and they unanimously gave him their highest possible rating. This doesn't happen to most nominees. Far fewer than 50 percent of the nominees for this court get a ''well qualified'' rating. And even fewer get a unanimous vote of ''well qualified'' by the lawyers who evaluate them.

So then he came before the Senate. President Bush nominated him in May, 2 years ago. Quickly—by that time, the Democrats have taken back control of the Senate when Senator JEFFORDS switched parties. So they chaired the Judiciary Committee. They refused to give him a hearing. They had all his records and all his files. I am sure they were looking at him very closely because they heard he was a conservative Republican Hispanic, and somebody even said, You know, he might be a good Supreme Court nominee. He could be a real good nominee. Maybe we better beat this guy up a little bit.

As a matter of fact, the more I studied his record, I saw his testimony, I think he would be a great Supreme Court nominee. He has the background, the academics, the integrity, the judgment, the record of accomplishment that would make a great Supreme Court Justice. There is no doubt about it in my mind.

Whatever the reason is, they decided to block him, so they would not give him a hearing. Finally, after almost 2 years, a year and a half or so, they have a hearing. Remember now, they conduct the hearing. Senator LEAHY is the chairman of the committee. Senator SCHUMER presided over the hearing. It went almost all day long. They could have had 3 days worth of hearings if they chose. They got to ask any questions they wanted to. He answered question after question after question. I thought he answered the questions brilliantly. I thought it was interesting tonight that LAMAR ALEXANDER, Senator ALEXANDER, went back and read his answers. Far from agreeing with those on the other side who said he did not answer the questions, he thought he answered them brilliantly. He thought he answered them exactly the

way a judge should answer them. And he did.

I saw him do that, and he was a great witness. He does have a speech impediment, but he handled it with such grace. He testified with such smoothness and so much judgment and wisdom. I remember distinctly him being asked. You know President Bush said he wanted a strict constructionist on the bench.

That is a layman's term for a judge who follows the law and doesn't make up law—not an activist the way people talk around the country.

They asked Estrada: Are you a strict constructionist? He said: Well, I wouldn't say that. He said: I would call myself a fair constructionist. I think you should give a fair meaning to the language of the statute and Constitution that we deal with. That is what I will try to do.

They later asked him written questions how he would evaluate Justices on the Supreme Court—all of them. Some of them are liberal and some are conservative. He said in his view they all try to be fair constructionists and he respects all of them but may differ on a few things but fundamentally they are in agreement.

So we had the hearing. He testified well. There were no complaints against him. There were suggestions that he had acted in a politically hostile or partisan way. There was no suggestion that he had any lack of integrity. In fact, his integrity has never been challenged. They never challenged his legal ability or scholarship.

They said he didn't have enough experience. That is just fundamentally false. I don't see how anybody on this floor can stand up and say he is not qualified by background and training and experience to be a court of appeals judge. That is ludicrous. He has one of the finest backgrounds any person I have seen for a court of appeals judge. He clerked for a court of appeals judge. He clerked for Anthony Kennedy on the Supreme Court, which I failed to mention, and he served in the Solicitor General's Office and the appellate division of the Attorney General's Office of the Southern District of New York—unbelievably good experience for this kind of a position.

So now, tonight, when we moved to go forward and end the obstruction and just vote, what kind of objection do we hear? Well, the objection was he didn't turn over his memoranda when he was an attorney in the Solicitor General's Office. He wrote internal memoranda, and we want to see what he said. He might have said something that we can get him on. So, Mr. Estrada, you won't turn over your memos, we will not confirm you.

Let us be truthful about this thing. They are not his memos. He has no authority whatsoever to turn over the Department of Justice memoranda—absolutely none. The Department of Justice says these are work products of the Department of Justice. Seven former Solicitors General—three of them Democratic Solicitors General—have said they must not be turned over; it is the wrong thing to do; we do not need to encroach on the executive branch's deliberating procedures. We don't need to chill free debate in the Solicitor General's Office. They must not be turned over. The Attorney General is not going to turn them over. So, therefore, they say: ''We gotcha.'' OK. Now we have an excuse not to vote for Estrada.

What is the excuse? He won't turn over the memoranda? They are not his to turn over. They are the Department of Justice memos. It is an unfair charge. He is being treated unfairly. The burden of proof is being put on him. They are accusing him of some ideological bent, but they never explain what it is they are unhappy with. Not one political, not one philosophical, not one theological position have I heard them criticize him for. It is absolutely baseless—just absolutely wrong to say he must turn over those memoranda. They are not his to turn over. He can't turn them over, and the Attorney General would violate high standards of ethics if he did. Oh, well, they said, you know, they turned them over for other people. You heard that argument.

Let me mention this first. Let us stop and slow down a minute and talk about some of the people who served as Solicitor General under Democratic administrations. The Solicitor General is a great lawyer position, as I stated before. But also the Solicitor General must be compatible with the President's philosophy and must advocate the views, insofar as he is able, that the President supports. The Solicitors General are attuned to their President.

Let me read what some Democratic Solicitors General said about Miguel Estrada.

Seth Waxman, former Solicitor General, Democrat, well respected throughout the country said:

> During the time Mr. Estrada and I worked together—

They worked together when he was Solicitor General—

> he was a model of professionalism and competence.

And he added:

> In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his political views.

What a compliment from a Democratic Solicitor General for whom he worked.

By the way, they want these memoranda. To whom are they written? They were written to Seth Waxman, Democratic Solicitor General under President Clinton.

What does Mr. Waxman say, Mr. Clinton's Attorney General?

> In no way did I ever discern that the recommendations Mr. Estrada made or the analyses he propounded were colored in any way by his personal views. During the time Mr. Estrada and I worked together he was a model of professionalism and competence.

I am telling you that there is no basis to object to this nominee.

Drew Days, another former Solicitor General under a Democratic administration and an African American, he wrote in support of Mr. Estrada:

> I think he is a superb lawyer.

When he worked for Drew Days, Mr. Days' signature was on his performance reviews giving Mr. Estrada the highest possible rating each year—the outstanding rating in every category on the evaluation sheet.

In the Department of Justice where I served, you have an evaluation form. Every supervisor has to fill it out and you can give them the rating. The highest rating is outstanding. In every category of rating Mr. Estrada got ''outstanding'' in the Clinton Department of Justice.

How can this man be an extreme person, some stealth candidate out of the right wing of America who can't be trusted on the bench? That is bogus and false and wrong. It is just unfair.

Robert Litt in the Department of Justice, former Deputy Assistant Attorney General, was considered by most people to be one of the more partisan members of the Department of Justice, a capable attorney, however, and certainly a Democrat. Mr. Litt said this:

> I have never felt that the arguments he made were in any way outside the scope of legitimate legal analysis.

Randolph Moss, former Assistant Attorney General, another Democrat:

> He has a near encyclopedic knowledge of the law.

Isn't that wonderful? Think of it.

> He has a near encyclopedic knowledge of the law, a powerful intellect and an ability to bring coherence to even the most complicated legal document.

I am telling you that is what a judge does. A judge must be able to bring coherence to complex legal matters to get to the heart of the matter, to get it to the simplest bases and make a just decision. I think that is an extremely high compliment.

I don't know what the Democratic Senators would look for in this nominee. It is beyond my comprehension how this man who is so qualified and with such a compelling life story would be blocked here. It really is stunning to me.

I have a lot of other things that I could say at this time. I will not go into all of them. I want to make the point about the certain memoranda that have been produced or have leaked out of the Department of Justice with regard to previous nominees.

Now, first, even if a prior Attorney General, at some moment of weakness, unwisely just produced all the memoranda and the work product of some nominee, that would not mean, to me, that we ought now to continue to violate an absolutely clear principle.

But, as I have seen the facts—and we have looked at them—not one Attorney General in history has responded to the

fishing expedition set forth here. This is clearly a fishing expedition. They don't say there is one thing they want for a specific reason. What do they say? They say: We want everything you ever wrote. And it is not going to happen. It is not going to happen—nada.

What about Easterbrook? They said they found a two-page memo he wrote when he was in the Department of Justice. Well, the official record of the Easterbrook hearing contains no reference to this document at all. The Department of Justice cannot find any records they ever authorized releasing this document. I am not sure how the people on the other side got it. The Justice Department said they did not release it. So something is fishy about that fishing expedition.

As for the documents on Robert Bork, I was here, and one of my colleagues across the aisle said: Oh, the documents have been given before. And he went on and on. He did not mention Judge Bork's name, and he waved around this document, that he was going to introduce it into the RECORD.

I have been in courtrooms a little bit. He said he was going to introduce it, but he never did. So I said: Are you going to introduce it into the RECORD? He said: Yes, yes, he would. So he introduced it into the RECORD. And I went and got it. I like to read these things.

Well, some can still remember—I don't know if the Presiding Officer was here when the Bork matter was before this body, but I think he was here. He remembers some of the intensity of the debate over the Bork matter.

He was the then-Solicitor General. You had the Attorney General and the deputy, and they would not fire Archibald Cox, the special prosecutor. The Attorney General quit, and the Deputy Attorney General quit, and it fell to Robert Bork; he fired Archibald Cox on behalf of President Nixon. There were all kinds of allegations that there were secret agreements and that Bork had done all kinds of corrupt things. And it was at the height of Watergate, so they demanded all kinds of documents, but they were specific.

Look, this is the document request. They wanted documents generated during the period from 1972 through 1974—not every year he was there—and constituting, describing, referring or relating in whole or in part to the so-called Watergate affair.

Well, people were concerned about Watergate. They were alleging everybody in the Government was a crook. So Bork was in there, and he fired Archibald Cox. They had some specific reasons, and they got some of these documents. I don't think they got them all. They wanted any communications between Robert Bork and any person or entity relating in whole or in part to the Office of Watergate Special Prosecution Force.

They wanted any documents related to the dismissal of Archibald Cox, the abolition of the Office of Watergate Special Prosecution Force, and so on, the designation of Leon Jaworski as Watergate Special Prosecutor, the enforcement of the subpoena at issue in Nixon v. Sirica, and those kinds of matters.

So that is a specific request. At least it had some colorable basis because people were concerned about Watergate. And Mr. Bork had been in the center of a very controversial decision that history records as one of the most controversial matters ever to come before the Department of Justice. So maybe they had a basis for that. And they got that. But they did not ask for everything he wrote. And the Department of Justice did not give it.

Well, I will just say this to my colleagues. I do not believe this has been lost on my colleagues. I think they know that this request is unprecedented. How could they not know that? How could they not know?

They come and say: Well, here is a memorandum that was produced. And they don't show it may have been, and was, in fact, in every instance, a reference to a specific allegation of misconduct or wrongdoing. So that is an argument without basis. It has been demonstrated by Senator HATCH. It has been demonstrated by the facts.

Anybody who is fair and objective, and will listen, will know there is no basis whatsoever for demanding that Miguel Estrada produce these documents. And that is what the distinguished Democratic leader objected on. His basis for objection was solely that Miguel Estrada would not produce the memoranda he wrote while he was in the Department of Justice.

This is a big time principle. It is a major issue. It is not an itty-bitty thing. The Department of Justice is not going to give them, and Miguel Estrada has no power whatsoever to give them because they are not his. They are the work product he made for his client. His client was the United States of America. The United States of America is entitled to the best efforts of its assistants and Assistant Solicitors General, and they ought to be able to express their opinions to their supervisors, as they wish.

So, Mr. President, I think we have had enough time on this nomination. He has waited almost 2 years. The hearing was conducted by the Democrats, and it was a long hearing. They followed up with further questions. He has agreed to meet with any single Senator to answer any questions they have.

He is a man of extraordinary talent, incredible achievement, a man who came here, and he has lived the American dream. I am exceedingly proud of Miguel Estrada. I think he is indeed qualified to be on the Supreme Court. He ought to be confirmed for this Court of Appeals position without any further debate whatsoever. And he ought to be, I hope, one day considered for the Supreme Court. He is certainly that qualified.

I hope we will avoid this filibuster, move forward in this Senate back in accordance with our traditions of comity and respect and courtesy, in which nominees are presumed to be confirmable unless something is shown to be wrong, and that the President is able to move nominees forward, because we need them on the bench today.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, this will be a tough act to follow. The Senator from Alabama has done a wonderful job going through the nuances of where we find ourselves and explained the career of Miguel Estrada better than I could possibly do and has talked about the factors that bring us here at 1:10 in the morning.

All I can add to it is that I am new to the body. I was hoping my first engagement with the Senate would be about Social Security and talking about saving that system. But I find myself in the middle of something very historic; that is the filibustering of a circuit court of appeals judge—apparently, the only time in the history of our Nation such tactics have been employed. And you ask yourself, Why? What has gotten us here? Why have they chosen to do this?

One thing about being a Presiding Officer of the Senate is you get to learn a lot and hear a lot. One thing I have learned is that in the past the abuses of the judicial nomination process have sometimes been striking, and apparently both sides have engaged in some practices that just really do not seem right.

There are all kinds of cases where judges were never given a chance to be voted on and left in committee for years. And people did not like one judge, and they decided to make sure they never got a vote. And they were in the majority. It goes on and on and on. I guess that is politics. I do not suggest that the Republican party, in the past, has not done some things that were probably unfair to people, too.

But what we are about to engage in will become the mother of all abuses. It will take the country in a direction that it need not go in terms of judicial nominations. And the country, I hope, will wake up and listen a little closer to what we are doing over time. Editorial writers are beginning to write, and they are beginning to understand what is at stake. And from a Republican point of view, it is very unusual to have all these papers siding with us and criticizing our friends on the other side. That is normally not the case. What we are doing does affect the future of the country in a very dramatic way.

A courtroom—unlike the business of politics that we all chose to engage in—is a place for quiet reflection. All of us here as Senators have something in common. Our goal is to get 50 plus one vote, or 50 percent of the vote plus one. We engage in a business that is

loud, expensive, nasty, and sometimes unpleasant but very important and very rewarding. Our objective, when it comes to election years, is to convince people to vote for us, call attention to what we have done, to how we are different from our opponent, and that we are better for your family and your business than the other person running. We have a big deal made about it, and we spend a lot of money, and we beat each other up, and the public votes and they get to express themselves. The majority wins.

Well, the courtroom is a different place. Our Founding Fathers understood that. There has to be someplace in a democracy where somebody who feels they have been wronged by a large group has a place to go other than the ballot box, because the ballot box sometimes is not the best place to ensure that justice is done in an individual case. So in our system the weak can sue the strong. They can go to a court, be judged by a jury of their peers, and the case will be presided over by somebody with a lifetime appointment, who doesn't have any polls to worry about, or any particular constituency to please. The only person to be pleased is Lady Justice.

The appeals process sends the case forward, and the courtroom itself, in terms of a trial, can be a pretty loud place, because you have witnesses, and a lot of testimony, and a lot of cross-examination. It can be a very flamboyant place. But whether or not that case will withstand scrutiny is determined by a panel of judges at the appeals level. And there is no quieter place in our legal system than the courts of appeals and the Supreme Court itself. People who are there for life listen to very well-constructed arguments by lawyers, who look at the precedents involved in the case, look at the Constitution, and try to render a fair verdict.

Our Founding Fathers understood that the judiciary needs to be an independent, separate branch of Government, immune, as much as it can be, from popular opinion, so that the unpopular may have a just verdict, or they may not get one otherwise.

Unfortunately, in this particular instance, the political trends to be set, if this filibuster is successful, will do great damage to the process of trying to pick qualified men and women to serve in this capacity in the future. The Constitution recognizes that the independent judiciary also needs a check and balance. Our judges at the Federal level are nominated by the President, the executive branch, and the Constitution has conferred upon this body the advise and consent role, a check and balance to the executive branch.

The Constitution envisioned supermajority votes of the Senate in a very few cases, and confirming a judge is not one of them. The Constitution envisions that nominees of any particular President will come to this body, and the Constitution envisions that a majority vote will determine the fate of that nominee.

The Senate rules, over time, have allowed the minority to be able to stop any particular matter, unless the majority can gather 60 votes. That is not part of the Constitution; that is part of the way the Senate works. For some reason, our friends on the Democratic side have chosen to filibuster a circuit court of appeals nominee for the first time in the history of our country. They have chosen Miguel Estrada for some reason. Well, I am not privy to their caucus conversations, but I have a feeling this goes back to last year's election. The Republican party picked up seats in last year's senatorial election that even we could not have envisioned as a party 2 years ago. Something happened in the 2002 election that allowed us to get 51 seats.

For every Member of the body, there is probably a different opinion as to what did happen in 2002. I argue to my friends on the other side that 100 years from now people will not write much about the 2002 election; they really won't care to know why Lindsey Graham got elected with nine other Republican freshman Senators. Unless I can do the Senator Thurmond thing, I will be long gone myself. But they will care and they will write about what happened to our country if we filibuster controversial judicial nominees as a matter of political practice. That will have taken us down a road that no one, so far, has gone down.

I am afraid that road would be a very unpleasant journey for our Nation. I think our friends on the other side of the aisle lost seats in 2002 because we had a popular Republican President, serving right after one of the most horrific events of our time—the tragedy of 9/11—a President Americans liked and trusted to make hard decisions. He was able to make the case to enough American voters in the 2002 election that the Senate in the hands of our Democratic colleagues was not producing in an appropriate fashion.

Now, I know people will disagree with that analysis, but that is what I believe. In my campaign, we talked about a homeland security bill that was held up because of special interest labor union politics. We talked about an antiterrorism insurance bill that would allow people to build buildings without having to absorb the risk of a terrorist attack by themselves because of legal provisions that trial lawyers wanted.

Also, we talked about judges who could not get a vote on the Senate floor. I am convinced that resonated, that after 9/11 people wanted us to work together and, rightly or wrongly, enough people in the country believed the Democratic-controlled Senate was not working as an efficient body and helping a President the public liked and wanted to be successful.

Right after the election in November, we had a special election in Louisiana in December. Our friends on the other side of the aisle were able to hold a seat. I argue that the momentum of the 2002 election was a moment in time, and that those in the Democratic Party who believe they must stand up to George W. Bush at every turn and take him on personally with every agenda he has control of must understand there is a limit to that strategy. The limit to that strategy has to be the common good. I argue that we have gone into an area where the common good is not being served. That the filibustering of Miguel Estrada's nomination to the DC Circuit Court of Appeals is not only unprecedented, I believe it is part of an overall strategy. I believe—and I hope I am wrong—that we will see this happen time and again this year; that this is part of a strategy by our friends on the other side to further obstruct the ability of the President to move judicial nominees through the system.

By employing this tactic, they have set a course that will be hard to turn. Politics being what it is, people have long memories, and there will come a day when a Democrat will occupy the White House and the Republican Party will be in the minority in the Senate, and it will be talked about: Remember what they did to Miguel Estrada.

There is a certain part of politics that appeals to our basic instincts, not the common good, and I hope, and I literally pray, that our friends on the other side of the aisle will find a different tactic to take to make their points of view known about President Bush's agenda, including judges, rather than engaging in a tactic that will basically supplant the constitutional role of confirming judges by requiring Senates of the future to have to gather 60 votes to confirm a controversial judicial nominee.

This tactic will hurt us all. This tactic will belittle and demean the judicial nomination process. This tactic will change the constitutional process we have lived with for well over 200 years in confirming judges. This tactic will allow a bitter minority of the greatest body in democratic history to act in a way that will make it very hard for good men and women to serve. And that bitter minority one day may be a Republican minority.

I hope that reason will prevail; that we can reach a compromise of some sort that will allow everybody to walk away from this in good faith and say they fought the good fight and that Miguel Estrada will have a vote up or down, and that this tactic of filibustering, requiring a supermajority vote for judicial nominees, will give way for the sake of the common good.

It has been amazing to me to see the transformation of the arguments against Miguel Estrada and how they have changed over time. Being a member of the Judiciary Committee, I can recall being shocked by hearing the phrase from someone—and I cannot remember who—''he's not Hispanic

enough.'' Obviously, I am not Hispanic, and I do not know what being ''Hispanic enough'' means. It was a phrase that just really did not sound nice, was not befitting of the experience we are all in, and was used to explain the fact that Miguel Estrada, by going to a private school, somehow did not share the Hispanic experience. That sounded offensive, and it was offensive. Nobody says it anymore, and that is the good news.

When the Hispanic groups that came out against Mr. Estrada's nomination first rallied around this cause, they were pretty hard on him as a person. Once one understands who he is and what he has gone through, it really is unfair to be hard on him as a person because he is a good person and he has overcome obstacles that everybody should be proud of, that I could only imagine.

He truly has lived the American dream. He made something of himself in the most difficult of circumstances. We do not hear much about that anymore. As a matter of fact, we hear from our friends on the other side of the aisle that this has nothing to do with his ethnic background. Good. Because it should not. It should be about who is qualified. We should enjoy and relish the fact that diversity is part of the American dream, and that for the first time, we will have a Hispanic member on the Circuit Court of Appeals for the District of Columbia, the second highest court in the land. That would be a good thing for America, and we should rejoice in it if it does happen.

Then the attacks moved to a different level: He has never been a judge. When I first heard that, it made me wonder. To be on the circuit court of appeals, maybe it is a good thing to be a judge before you get promoted. Then I learned that Justice Rehnquist and untold numbers of men and women serving in the Federal judiciary were promoted to very important positions without ever having any previous judicial experience, which makes sense because being a judge is a cocktail of several items: Temperament, intellect, the ability to understand human behavior, the ability to reason and to have a kind and compassionate disposition. That is what I am looking for, and people can bring those qualities to the table without ever having worn a robe.

That argument, that he has never been a judge, fell by the wayside when the untold numbers of judges who never had any experience before came forward. So he is like so many others. It makes no sense to say no because of that.

The next argument is he is ideologically driven; that there is something about this man that would not allow him to look at my case or your case or anyone else's case fairly because he is so driven by his ideology that he cannot see justice, that he cannot see facts, and he cannot see prior decisions. I am assuming this ideology is one of some extreme view of the law that only a radical conservative could have; that he is ideologically not equipped to serve in such an important job.

That has to be analyzed in terms of the man's life. It is easy to say something, but it should be a requirement that it be true. I will just offer one fact for people to consider. If he is so ideologically driven that he cannot fairly render justice, how in the world could he have worked for the Bill Clinton administration? I would argue that any ideologically driven conservative would have had a hard time working for Bill Clinton. Not only did Miguel Estrada work in the Clinton administration's Justice Department, he performed in an outstanding manner.

One of the gentlemen who accused him of being ideologically driven happened to be the person who rated his performance, and during the reporting periods involved, he said he was an outstanding lawyer who always applied the law and the facts based on reason and not personal agendas.

The idea that Miguel Estrada is some right-wing ideologue makes absolutely no sense, and he is being supported by the people who know him the best—by Democrats and Republicans who understand that he is a man of great credentials. I will assure my colleagues of one thing, if you do not believe anything else I have said, that the American Bar Association is never going to unanimously support somebody who is an ideologue on the conservative side, and he received a most highly coveted rating, well qualified, by the American Bar Association. That argument that he is an ideologue that cannot see reason is stupid.

The next one is: We do not know enough about him and the only way we are only going to know about him is for us, our friends on the other side, to have access to all the memoranda he has ever written as a lawyer when he worked for the Department of Justice.

There is a reason that all the Solicitors General have come out unanimously against the idea of producing legal memorandum in that Department to the Congress. Nobody would want the lawyers who worked for them, who advise them with written or oral opinions, to have that work product disclosed to the public in a fashion that would change people's opinions and change the way they would advise. If it ever becomes the law of the land, if this case results in internal memos written by lawyers to clients, if that becomes part of how a judge is chosen, then I would argue that Government lawyers who have any aspirations of being a judge are going to find themselves in a very difficult circumstance.

There is a reason that every Solicitor General living today has said that the memos requested by our friends on the other side should not be released. What I find most astonishing is that the last administration, and some who know me understand that I was probably not their biggest fan, time and time again used privilege after privilege, mostly made up, to protect everything they touched. I thought they abused the privilege doctrines, but here is something we should all be able to agree upon: That when a lawyer writes a memo to a client, that should stay between the client and the lawyer. And if the client does not want the memo released, for the good of us all, for the sake of the attorney-client privilege, for the sake of good government, that request should be denied. We do not know enough about him because we really have not had a chance to talk to him.

I was in the Judiciary Committee. The man was there all day. There is a volume that was produced from the hearings. He has been around for a year and a half. He has answered questions. I think he has given good answers. This is not about not knowing enough about him, not being able to answer the questions that were not properly asked, because the people who want this information are going to vote no anyway.

This is about conservative versus liberal. This is about politics. This is about trying to rectify the losses in 2002. I am convinced that our friends on the other side of the aisle have decided that the only way they can get back into the game is to oppose President Bush. Instead of learning from the 2002 elections that obstruction was not the way to a majority, I think they have blinders on now in that they have engaged in a political dynamic that not only will not allow them to regain the majority of this body but could do irreparable damage to our country in the future.

I know that each and every one of them believes that there is a high purpose for what they are doing; they love their country as much as I do and would disagree with my assessment. But this I am sure of: if this filibuster is successful, 100 years from now we will have changed the way business is done in the Senate in regard to confirming controversial judicial nominees. And 100 years from now, people, if they could, would come back to each and every one of us and say: Why did you do that? I wish you would have not done that. We are paying a price for your desire to get a political advantage that you could not even envision.

I am hopeful that over time there will be Members on the other side of the aisle sufficient enough in number who will say: I will not engage in this practice to the point that I am legitimizing a filibuster of a circuit court nominee that will set in motion forces of the future that will change the way the Constitution works.

I am hopeful we will eventually get enough votes not to confirm Miguel Estrada but to allow a vote to be had to confirm Miguel Estrada. If that vote is had, he will win, I am convinced. For the sake of the future of this country, I hope that some time in the near future this tempting practice of making

it hard for President Bush to get forward any judicial nominee our friends on the other side do not like will be abandoned because I am convinced they will look back in their political career with great regret that they ever did this.

Several of them are on record of having said in the past, just give him a vote. I will never engage in a filibuster of a judge because I think it is wrong, I think it is bad for the country. When Senator LEAHY said it, he was right. When Senator KENNEDY said it, he was right. When Senator FEINSTEIN said it, she was right. At the time they saw very clearly the consequences of what could happen.

We are too close to the 2002 election for some of our friends on the other side of the aisle to see clearly. All they see is a majority lost and a real desire to get it back. Please reflect, please do not be blinded by the political moment. Please do not take our country down a road that we will all regret.

Mr. KOHL. Mr. President, I rise today to explain again my reasons for supporting a filibuster on the nomination of Miguel Estrada. At the outset, let me state that my opposition to bring his nomination to a vote is not a decision I have reached causally or without serious reflection. Our power to extend debate on a nomination should only be undertaken in extraordinary circumstances, when we have no other choice. We have reached that unfortunate state of affairs today.

In the case of Mr. Estrada, we are presented with a nominee for a lifetime appointment to our Nation's second most powerful court. This nominee has refused to answer our questions regarding his views and judicial philosophy, and indeed has obstructed our efforts to evaluate his fitness to serve on the D.C. Circuit. His repeated evasions subvert our solemn constitutional duty to advise and consent to judicial nominations. We should not permit a vote on a judicial nominee who has so fundamentally attempted to obstruct our confirmation process in this way.

I am aware of the criticism that our action is unprecedented. This is simply not true. While such a step is not—and should not—be done routinely, filibusters of judicial nominations have been undertaken under the leadership of both parties several times in recent years. According to the Congressional Research Service, the Senate has attempted to invoke cloture in response to extended debate on judicial nominees 13 times since 1968. Indeed, cloture was sought after extended debate in response to Republican-led opposition to no fewer than four of President Clinton's judicial nominees.

These statistics do not take into account the silent filibuster known as a ''hold''—often anonymous—which permits one objector to block consideration of a judicial nominee. President Clinton's nominees were routinely defeated by anonymous holds. And those holds only defeated the nominees who were lucky enough to even get a hearing and a committee vote. It seems that the same forces complaining about the ''unfairness'' of extended debate on the Estrada nomination were enthusiastic in blocking President Clinton's nominees without any debate just a few short years ago.

I also am distressed at the false and misleading charges and accusations that Mr. Estrada's supporters have leveled during this debate. The most outrageous is the cynical charge that our opposition to Mr. Estrada is somehow motivated by the fact that he is Hispanic. Nothing could be further from the truth. Our opposition to him is solely based on his consistent obstruction of our review of his nomination and his unwillingness to provide us with the information needed to evaluate his fitness.

No observer can doubt that we support and indeed make diversity a priority in our courts, including appointing Hispanic Americans to fill these positions. And let's remember that the confirmation of at least three highly qualified appellate court nominees of Hispanic origin nominated by President Clinton—two for the Fifth Circuit and one for the Ninth Circuit—were blocked by the same people who complain today about our opposition to Mr. Estrada. One thing is perfectly clear: This nomination has nothing to do with ethnicity and everything to do with duplicity.

When Mr. Estrada refuses to candidly share his views with us, we are left with his record. And this record leaves us with grave concerns about confirming him to this crucial judgeship. A few examples from Mr. Estrada's career highlight these concerns. Mr. Estrada devoted substantial time and energy to defending, on behalf of pro bono clients, anti-loitering statutes, laws which often result in the arrests of a disproportionate number of African-Americans and Latinos. These laws have been repeatedly struck down for violating free speech rights. On the other hand, Mr. Estrada has argued on behalf of the First Amendment rights of a large pharmaceutical company charged with engaging in a deceptive advertising campaign. These two cases make it appear that Mr. Estrada is more comfortable with asserting the First Amendments rights of giant corporations than average citizens. He has also argued in Federal court against the standing of civil rights organizations to vindicate the constitutional rights of their members.

When one reviews Mr. Estrada's professional record, then, there appears to be little to rebut the opinion offered by Paul Bender, his supervisor for three years at the Solicitor General's office, that Mr. Estrada is a ''right-wing ideologue'' who ''lacks [the] judgment . . . to be an appeals court judge.'' This view, from the one person at the Solicitor General's office who knew his work best, is damning.

Of course, if we had access to Mr. Estrada's memorandums and opinions at the Solicitor General's office, we could evaluate for ourselves whether Mr. Bender's opinion is unduly harsh or not. But we do not have such access. If Mr. Estrada was willing to candidly discuss his views and judicial philosophy with us, our concerns about whether he was outside the mainstream might be assuaged. But this he is also not willing to do so. We have no choice but to rely on his record, and this record convinces us that he does not warrant confirmation to the D.C. Circuit.

Anyone who reviews my record on judicial nominations knows that I have not reached my decision to support extended debate here—indeed my decision to oppose Mr. Estrada's confirmation—lightly. In my entire 14 years in the Senate, I have voted to oppose the confirmation of judicial nominations only seven times. But this nominee's evasions and gross disrespect for our nomination process, when combined with the disturbing evidence from his public record of his extreme ideology, leave me no choice.

One of the most important tasks we perform is our constitutional duty to ''advise and consent'' on judicial nominations. Once their nominations are confirmed by the Senate, these men and women serve lifetime appointments, unanswerable to Congress, the President, or the people. They will become the guardians of our liberties, of our Constitution, and of our civil rights. Our duty to ''advise and consent'' is the only check we will ever have on the qualifications and fitness of those chosen to serve as Federal judges.

When a nominee subverts and impedes this vital process by declining to answer our questions so that we cannot evaluate his fitness to serve, he has disqualified himself for consideration by this body. We simply cannot vote up or down on a nominee who both has no judicial record and refused to provide us with the information necessary for us to gain even the most basic understanding of his opinions, his outlook, or judicial philosophy. For these reasons, I oppose his confirmation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Without objection, it is so ordered.

Mr. FRIST. Mr. President, as majority leader, I have not taken the opportunity today to discuss the nomination of Miguel Estrada, although I did have the opportunity to participate in the debate and the discussion that we had earlier this evening.

Of course it always on my mind, because the filibuster that is being maintained is very troubling.

Well, I wanted to find some time and it is now 1:45 in the morning here in

Washington, and this time works for me.

As we have heard tonight, the leading obstacle to Miguel Estrada's confirmation are unprecedented requests by the minority of documents written by Mr. Estrada when he worked for the Clinton Reno Justice Department.

Well, since we have time, I would like to read at length from a letter just released, this will be the first time anyone has heard this letter to my colleague the Senator from New York from Alberto Gonzales, President Bush's White House Counsel, and like Miguel Estrada, a fine legal mind.

The letter is dated February 24, 2003, and it begins:

Dear Senator SCHUMER: Based on your public comments yesterday, I am concerned that you may have inaccurate and incomplete information about Miguel Estrada's qualifications and about the historical practice with respect to judicial confirmations. Therefore, I write to respectfully reiterate and explain our conclusion that you and certain other Senators are applying an unfair double standard—indeed, a series of unfair double standards—to Miguel Estrada.

First, your request for confidential attorney-client memoranda Mr. Estrada wrote in the Office of Solicitor General seeks information that, based on our review, has not been demanded from past nominees to the federal courts of appeals. We are informed that the Senate has not requested memoranda such as these for any of the 67 appeals court nominees since 1977 who had previously worked in the Justice Department—including the seven nominees who had previously worked in the Solicitor General's office.

Nor have such memoranda been demanded from nominees in similar attorney-client situations: The Senate has not demanded confidential memoranda written by judicial nominees who had served as Senate lawyers, such as memoranda written by Stephen Breyer as a Senate counsel before Justice Breyer was confirmed to the First Circuit in 1980. Nor has the Senate demanded confidential memoranda written by judicial nominees who had served as law clerks to Supreme Court Justices or other federal or state judges. Nor has the Senate demanded confidential memoranda written by judicial nominees who had worked for private clients.

The very few isolated examples you have cited were not nominees for federal appeals courts. Moreover, those situations involved Executive Branch accommodations of targeted requests for particular documents about specific issues that were primarily related to allegations of malfeasance or misconduct in a federal office. We respectfully do not believe these examples support your request. Our conclusion about the general lack of support and precedent for your position is buttressed by the fact that every living former Solicitor General (four Democrats and three Republicans) has strongly opposed your request and stated that it would sacrifice and compromise the ability of the Justice Department to effectively represent the United States in court. In short, the traditional practice of the Senate and the Executive Branch with respect to federal appeals court nominations stands in contrast to your request here and supports our conclusion that an unfair double standard is being applied to Miguel Estrada. (Also, contrary to your suggestion yesterday, please note that no one in the Executive Branch has reviewed these memoranda since President Bush took office in January 2001.)

Second, you suggested that ''no judicial nominee that I'm aware of, for such a high court, has ever had so little of a record.'' I respectfully disagree. Miguel Estrada has been a very accomplished lawyer, trying cases before federal juries, briefing and arguing numerous appeals before federal and state appeals courts, and arguing 15 cases before the Supreme Court, among his other significant work. His record and breadth of experience exceeds that of many judicial nominees, which is no doubt why the American Bar Association—which you have labeled the ''gold standard''—unanimously rated him ''well-qualified.'' In noting yesterday that Mr. Estrada's career had been devoted to ''arguing for a client,'' you appeared to imply that only those with prior judicial service (or perhaps ''a lot of [law review] articles'') may serve on the federal appeals courts. But five of the eight judges currently serving on the D.C. Circuit had no prior judicial service at the time of their appointments. Indeed, Supreme Court Justices Rehnquist, White, and Powell—to name three of the most recent—had not served as judges before being confirmed to the Supreme Court. And like Mr. Estrada, two appointees of President Clinton to the D.C. Circuit (Judge David Tatel and Judge Merrick Garland) had similarly spent their careers ''arguing for a client,'' but were nonetheless confirmed.

Now the letter goes on to quote from the Chief Justice:

As the Chief Justice noted in his 2001 Year-End Report, moreover, ''[t]he federal Judiciary has traditionally drawn from a wide diversity of professional backgrounds.'' The Chief Justice cited Justice Louis Brandeis, Justice John Harlan, Justice Byron White, Judge Thurgood Marshall (as nominee to the Second Circuit), Judge Learned Hand, and Judge John Minor Wisdom as just a few examples of great judges who had spent virtually their entire careers ''arguing for a client'' before becoming Supreme Court Justices or federal appeals court judges.

As these examples show, had the ''arguing for a client'' standard been applied in the past, it would have deprived the American people of many of our most notable appellate judges. Based on our understanding, this standard has not been applied in the past. This further explains why we have concluded that an unfair double standard is being applied to Miguel Estrada.

Third, you stated that ''when you went to those hearings, Mr. Estrada answered no questions.'' The record demonstrates otherwise. Mr. Estrada answered more than 100 questions at his hearing, and another 25 in follow-up written answers. He explained in some detail his approach to judging on many issues, and did so appropriately without providing his personal views on specific legal or policy questions that could come before him—which is how previous judicial nominees of Presidents of both parties have appropriately answered questions. Indeed, at his hearing, Mr. Estrada was asked and answered more questions, and did so more fully, than did President Clinton's appointees to this same court. Judge David Tatel was asked a total of three questions at his hearing. Judges Judith Rogers and Merrick Garland were each asked fewer than 20 questions. The three appointees of President Clinton combined thus answered fewer than half the number of questions at their hearings that Mr. Estrada answered at his hearing.

What is more, like Mr. Estrada, both Judge Rogers and Judge Garland declined to give their personal views on disputed legal and policy questions at the hearing. Judge Rogers refused to give her views when asked about the notion of an evolving Constitution. And Mr. Garland did not answer questions about his personal views on the death penalty, stating that he would follow precedent. In short, we believe that your criticism of Mr. Estrada's answers at his hearing reveals that another unfair double standard is being applied to Mr. Estrada.

Fourth, you stated that the Founding Fathers ''came to the conclusion that the Senate ought to ask a whole lot of questions'' of judicial nominees. We respect the Senate's constitutional role in the confirmation process, and we agree that the Senate should make an informed judgment consistent with its traditional role and practices. But your characterization of the Senate's role with respect to judicial nominations is not consistent with our reading of historical or traditional practice.

Alexander Hamilton explained that the purpose of Senate confirmation is to prevent appointment of ''unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.'' The Federalist 76. The Framers anticipated that the Senate's approval would not often be refused unless there were ''special and strong reasons for the refusal.'' Id. Moreover, the Senate did not hold hearings on judicial nominees for much of American history, and the hearings for lower-court nominees in modern times traditionally have not included the examination of personal views that you have advocated. (My letter of February 12, 2003, to Senators Daschle and Leahy contains more detail on this point.) Indeed, just a few years ago, Senator BIDEN made clear, consistent with the traditional practice, that he would vote to confirm an appeals court judge if he were convinced that the nominee would follow precedent and otherwise was of high ability and integrity.

In short, it appears that you are seeking to change the Senate's traditional standard for assessing judicial nominees. We respect your right to advocate a change, but we do not believe that the standard you seek to apply is consistent with the Framers' vision, the traditional Senate practice, or the Senate's treatment of President Clinton's nominees. Rather, we believe a new standard is being devised and applied to Miguel Estrada.

Fifth, you stated yesterday that a ''filibuster'' is not an appropriate term to describe what has been occurring in the Senate. We respectfully disagree. Democrat Senators have objected to unanimous consent motions to schedule a vote, and they have indicated that they will continue to do so. That tactic is historically and commonly known as a filibuster, and is a dramatic escalation of the tactics used to oppose judicial nominees. Indeed, in 1998, Senator LEAHY stated:

I have stated over and over again on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty. If we don't like somebody the President nominates, vote him or her down. But don't hold them in this anonymous unconscionable limbo, because in doing that, the minority of Senators really shame all Senators.'' 144 Cong. Rec. S6522 (June 18, 1998). In

our judgment, the tactics now being employed again show that Miguel Estrada is receiving differential treatment.

Now Judge Gonzales Concludes this way, addressing himself to Senator Schumer:

As I have said before, I appreciate and respect the Senate's constitutional role in the confirmation process. You have expressed concern that you do not know enough about Mr. Estrada's views, but you have not submitted any follow-up questions to him. We respectfully submit that the Senate has ample information and has had more than enough time to consider questions about the qualifications and suitability of a nominee submitted more than 21 months ago. Most important, we believe that a majority of Senators have now concluded that they possess sufficient information on Mr. Estrada and would vote to confirm him. We believe it is past time for the Senate to vote on this nominee, and we urge your support.

Sincerely,

ALBERTO R. GONZALES
Counsel to the President

Now as we heard earlier an enormous number of editorials, over 60 editorials all over the country have opposed the Democrat filibuster and support Miguel Estrada. Only eight have taken the Democrat view of things—only eight.

It is clear to anyone that what the minority is doing in filibustering Miguel Estrada's nomination is far from the mainstream of what thoughtful people are thinking across this country.

Mr. President, I will read from just a few of these:

First, on the question of the Solicitor General memos:

Boston Herald, 2/14/03:

The latest [bad argument] has to do with the White House's refusal to release memos and documents written by Estrada during his tenure in the solicitor general's office. Now all of the living former solicitors general—four Democrats and three Republicans—happen to agree with the White House position. There is such a thing as attorney-client privilege, even for the solicitor general.

South Carolina's Spartenburg Herald Journal, 2/14/03:

The administration refused to turn over his Justice Department memos—though no reasonable Congress ought to be seeking such material, as a letter from all living former solicitors general attests. They have asked the White House to release internal legal memos he wrote while working for the Solicitor General's Office. These are documents that are usually kept within the White House. In fact, every living former solicitor general, four Democrats and three Republicans, are against releasing the memos. Presidents rely on the Solicitor General's Office to give them legal advice. They don't want those lawyers to be worrying about how their memos will impact future attempts to win judicial seats. The White House has refused to release the documents.

California's Redding Record Searchlight, 2/15/03:

Well, but the administration won't hand over memos he wrote when he was in the solicitor general's office, say the Senate Democrats. It apparently does not matter to them that publicizing them could rob future memos of their candor and that every former solicitor general of either party has said the Democrats seek too much.

Rhode Island's Providence Journal-Bulletin, 2/14/03:

[Democrats] have demanded not only supplementary detailed responses to political inquiries, but also Mr. Estrada's confidential memoranda written while he was an assistant solicitor general. Every living solicitor general, Democratic and Republican, has gone on record to oppose this unwarranted intrusion into the deliberative process in the Justice Department. And the Bush administration has been correct to resist Democratic demands.

Chicago Tribune, 2/10/03:

The Justice Department has refused to release Estrada's memos, noting that such documents have always been regarded as confidential. Every living former solicitor general, Democratic and Republican, has publicly endorsed that position. They say making the documents public would discourage government lawyers from offering candid advice. Anyone who wants a glimpse into Estrada's thinking can scrutinize the briefs he wrote and oral arguments he made.

Detroit News, 2/11/03:

Democrats also demanded that he produce his memos and recommendations while he was in the solicitor general's office—which had never been done for any other candidate who had been an assistant in that office. The demand was rejected not only by Estrada, but by every former solicitor general still living, including those who served Democratic presidents.

Tampa Tribune, 2/10/03:

Yet the Democrats claim they don't know enough about Estrada. They have demanded to see copies of his work in the Justice Department, intentionally seeking papers they knew to be confidential. Because Estrada did not turn them over, they have attempted to crucify him, this despite letters from former solicitors general complaining that their demand amounted to legislative overreach and that acceding to it would set a dangerous precedent.

St. Louis Post-Dispatch, 2/7/03:

Mr. Estrada is an immigrant from Honduras who went to Harvard Law School, clerked on the Supreme Court and worked in the Solicitor General's office. Democrats, frustrated by the absence of a paper trail, and Mr. Estrada's sometimes-evasive answers on issues such as abortion, tried to get legal memos that Mr. Estrada wrote while in the Solicitor General's office. But both Democratic and Republican solicitors general have urged that the memos be kept private so that future solicitors general receive candid views from their staff. In short, the Democratic position doesn't justify a filibuster.

Washington Post, 2/5/03:

Mr. Estrada's nomination in no way justifies a filibuster. The case against him is that he is a conservative who was publicly criticized by a former supervisor in the Office of the Solicitor General, where he once worked. He was not forthcoming with the committee in its efforts to discern his personal views on controversial issues—as many nominees are not—and the administration has (rightly) declined to provide copies of his confidential memos from his service in government.

Also from the Washington Post, September 29 of last year:

Democrats are still pushing to see confidential memos Mr. Estrada wrote in the solicitor general's office and trumpeting criticism of him by a single supervisor in that office—criticism that has been discredited by that same colleague's written evaluations. Seeking Mr. Estrada's work product as a government lawyer is beyond any reasonable inquiry into what sort of judge he would be. Nor is it fair to reject someone as a judge because that person's decision to practice law, rather than write articles or engage in politics, makes his views more opaque. And it is terribly wrong to demand that Mr. Estrada answer charges to which nobody is willing to attach his or her name.

The Press-Enterprise, Riverside, CA, entitled ''Advice and Filibuster,'' 2/18/03:

Democratic senators are frustrated by the White House's refusal to release to them memoranda he wrote as solicitor general. But in the best of times, such a request would be out of line, and these are closer to the worst than to the best for the nomination process. If the memoranda were to be used as an honest beginning to a discussion of Mr. Estrada's legal views, there might be some justification for releasing the documents that would normally be considered privileged. One suspects that's not the role the Democrats have in mind for the memoranda. They probably hope to expose Mr. Estrada's conservative views, which no one doubts he holds, in hopes of defeating the nomination or at least scoring some political points.

Winston-Salem Journal, 2/20/03:

[Democrats] have demanded that [Mr. Estrada] turn over confidential papers from his years as solicitor general. Congress should not be asking for such material, as all living solicitors general have said in a letter.

Mr. President, as I said, over 60 editorials share this view. Only 8 have expressed an opposite view.

Mr. President, the hour is late, or early, depending on how you see it. I hope that my friends on the other side of the aisle will see differently tomorrow in the light of day.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate return to Legislative Session and proceed to a period of morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

RACE-SENSITIVE ADMISSIONS: BACK TO BASICS

Mr. FRIST. Mr. President, I ask unanimous consent that the following paper, ''Race-sensitive Admissions: Back to Basics,'' by William G. Bowen, president emeritus of Princeton University, and Neil L. Rudenstine, president emeritus of Harvard University, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The controversy (and confusion) surrounding the White House's recent statements on the use of race in college and university admissions indicate the need for careful examination of the underlying issues. The Justice Department has filed a brief with the U.S. Supreme Court urging it to declare two race-sensitive policies at the University of Michigan unconstitutional; however, the brief does not rule out ever taking

race into account, but argues that institutions should first exhaust all ''race-neutral'' alternatives. Secretary of State Colin Powell has publicly said that he supports not just affirmative action, but also the Michigan policies. National Security Adviser Condoleezza Rice says she opposes the specific methods used by Michigan, but recognizes the need to take race into account in admissions.

As the Supreme Court prepares to hear oral arguments in a case that will shape college admissions processes in the coming decades, those of us who believe that such processes should be permitted to include a nuanced consideration of race must speak out clearly as well as forcefully. Too often, we fear, the key issues have been oversimplified or overlooked. Having been personally involved with this highly contentious subject for more than 30 years, we would like to try to frame the discussion by offering a set of nine connected propositions about race and admissions that derive from core human values and substantial empirical research.

1. The twin goals served by race-sensitive admissions remain critically important.

The debate over race-sensitive admissions has relevance only at public and private institutions of higher education that have to choose among considerably more qualified candidates than they can admit. Essentially all of these ''academically selective'' colleges and universities have elected to take race into account in making admissions decisions, a fact that, in itself, has considerable import. Race-sensitive admissions programs are intended to serve two important purposes:

To enrich the learning environment by giving all students the opportunity to share perspective and exchange points of view with classmates from varied backgrounds. The recognition of the educational power of diversity led many colleges and universities—well before the mid-1960s, when the term affirmative action began to be used—to craft incoming classes that included students representing a wide variety of interests, talents, backgrounds, and perspectives. The Shape of the River, written by William Bowen and Derek Bok, provides abundant evidence that graduates of these institutions value educational diversity and, in general, are strong supporters of race-sensitive admissions. Survey responses from more than 90,000 alumni of selective colleges and universities show that nearly 80 percent of those who enrolled in 1976 and 1989 felt that their alma mater placed the right amount of emphasis—or not enough—on diversity in the admissions process. That same survey also found that there is much more interaction across racial lines than many people suppose. In the 1989 entering cohort, 56 percent of white matriculants and 88 percent of black matriculants indicated that they ''knew well'' two or more classmates of the other race.

To serve the needs of the professions, of business, of government, and of society more generally by educating large numbers of well-prepared minority students who can assume positions of leadership—thereby reducing somewhat the continuing disparity in access to power and responsibility that is related to race in America. Since colonial days, colleges and universities have accepted an obligation to educate individuals who will play leadership roles in society. Today, that requires taking account of the clearly articulated needs of business and the professions for a healthier mix of well-educated leaders and practitioners from varied racial and ethnic backgrounds. Professional groups like the America Bar Association and the American Medical Association, and businesses like General Motors, Microsoft, and American Airlines (among many others), have explicitly endorsed affirmative-action policies in higher education. Leading law firms, hospitals, and businesses depend heavily on their ability to recruit broadly trained individuals from many racial backgrounds who are able to perform at the highest level in settings that are themselves increasingly diverse. A prohibition on the consideration of race in admissions would drastically reduce minority participation in the most selective professional programs. Does it make any sense to resegregate, de facto, many of the country's most respected professional schools and to slow the progress that has been made in achieving diversity within the professions? We don't think so.

2. Private colleges and universities are as likely as their public counterparts to be affected by the outcome of this debate.

The fact that litigation over affirmative action has, thus far, centered on public universities should not lead that private institutions will be unaffected. The 1996 federal-court ruling in Hopwood v. Texas, banning race-sensitive admission policies in Texas, Louisiana, and Mississippi, has been understood to cover Rice University as well as public universities such as the University of Texas. Title VI of the Civil Rights Act of 1964 subjects all institutions that receive federal funds to any court determinations as to what constitutes ''discrimination.'' Because many private colleges and universities have invested substantial resources in creating diverse entering classes, they might well be more dramatically affected by any limitation on their freedom to consider race than would most public institutions. That is especially true because they are, in general, smaller and more selective in admissions than their public counterparts.

It matters that minority applicants have access to the most selective programs, at both undergraduate and graduate levels, in both private and public institutions. The argument that they will surely be able to ''get in somewhere'' rings hollow to many people. As one black woman quoted in The Shape of the River observed wryly to a white parent: ''Are you telling me that all those white folks fighting so hard to get their kids into Duke and Stanford are just ignorant? Or are we supposed to believe that attending a top-ranked school is important for their children but not for mine?'' That interchange was not just about perceptions. Various studies show that the short-term and long-term gains associated with attending the most selective institutions are, if anything, greater for minority students than for white students, and that academic and other resources are concentrated increasingly in the top-tier colleges and universities.

3. Race-sensitive admissions policies involve much ''picking and choosing'' among individual applicants; they need not be mechanical, are not quota systems, and involve making bets about likely student contributions to campus life and, subsequently, to the larger society.

Contrary to what some people believe, admissions decisions at academically selective public and private colleges and universities are much more than a ''numbers game.'' They involve considerations that extend far beyond test scores and GPAs. Analysis of new data from leading private research universities for the undergraduate class entering in 1999 (reported in the forthcoming Reclaiming the Game, by William G. Bowen and Sarah A. Levin) indicates that a very considerable number of high-scoring minority students were turned down. For instance, among male minority applicants with combined SAT scores in the 1200–1299 range (which put them well within the top 10 percent of minority test-takers and the top 20 percent of all test-takers, regardless of race), the odds of admission were about 35 percent: that is, roughly two out of three of these minority applicants were denied admission. At the very top of the SAT distribution (in the 1400-plus range), nearly two out of five were not admitted. Public universities are larger and somewhat less selective, but they also turn down very high-scoring minority candidates. At two public universities for which detailed data are available, one out of four minority candidates in the 1200 to 1399 SAT range was rejected.

In short, admissions officers at both private and public universities have been doing exactly what Justice Powell, in the landmark 1978 decision, Regents of the University of California v. Bakke, said that they should be allowed to do: pursuing ''race-sensitive'' admission policies that entail considering race among other factors. They have been weighing considerations that are both objective (advanced-placement courses taken in high school, for example) and subjective (indications of drive, intellectual curiosity, leadership ability, and so on). And they have been selecting very well. According to all the available evidence, minority students admitted to academically selective colleges and universities as long ago as the mid-1970s have been shown to be successful in completing rigorous graduate programs, doing well in the marketplace, and, most notably, contributing in the civic arena out of all proportion to their numbers.

Minority candidates are, of course, by no means the only group of applicants to receive special consideration. Colleges and universities have long paid special attention to children of alumni, to ''development cases,'' to applicants who come from poor families or who have otherwise overcome special obstacles, to applicants who will add to the geographic (including international) diversity of the student body, to students with special talents in fields such as music, and, especially in recent years, to athletes. Some readers may be surprised to learn from Reclaiming the Game that recruited athletes at many selective colleges are far more advantaged in the admission process (that is, are much more likely to be admitted at a given SAT level) than are minority candidates.

A related topic deserves some emphasis, and that is the issue of ''quotas.'' There is not space here to discuss the subject in detail, but one point is important to clarify. The fact that the percentage of minority students in many colleges and universities does not fluctuate substantially from year to year is in no sense prima facie evidence that quotas are being used. Anyone familiar with admissions processes—and with their basic statistics—knows that percentages for virtually all subgroups of any reasonable size are remarkably consistent from year to year. That is because the size of the college-going population does not change significantly on an annual basis, nor do the numbers and quality of secondary schools from which institutions draw applications, nor does the number of qualified candidates. All of these numbers are very stable, and it is therefore not at all surprising that incoming college classes should change very little in their composition from year to year. (For example, we suspect that the fraction of an entering class wearing eyeglasses is remarkable consistent from year to year, but that would hardly persuade us that an eyeglass quota is being imposed.)

4. Selectivity and ''merit'' involve predictions about on-campus learning environments and future contributions to society.

One of the most common misconceptions is that candidates who have scored above some level or earned a certain grade-point average ''deserve'' a place in an academically selective institution. That ''entitlement'' notion

is squarely at odds with the fundamental principle that, in choosing among a large number of well-qualified applicants, all of whom are over a high threshold, colleges and universities are making bets on the future, not giving rewards for prior accomplishments. Institutions are meant to take well-considered risks. That can involve turning down candidate ''A'' (who is entirely admissible but does not stand out in any particular way) in favor of candidate ''B'' (who is expected to contribute more to the educational milieu of the institution and appears to have better long-term prospects of making a major contribution to society). All applicants, of course, deserve to be evaluated fairly, which means treating them the same way as other similarly situated candidates; but, in the words of Lee Bollinger, president of Columbia University and former president of the University of Michigan, ''there is no right to be admitted to a university without regard to how the overall makeup of the student body will affect the educational process or without regard to the needs of the society . . . ''Merit'' is not a simple concept. It has certainly never meant admitting all the valedictorians who apply, or choosing students strictly on the basis of test scores and GPAs.

An elaborate admissions process, which focuses on the particular characteristics of individuals within many subgroups—and on those of the entire pool of applicants—is designed to craft a class that will, in its diversity, be a potent source of educational vitality. Colleges use a variety of procedures to take account of race, and it is essential that differences of opinion concerning the wisdom (or even the legality) of any single approach not lead to an outcome that precludes other approaches.

5. Paying special attention to any group in making admissions decisions entails costs; but the costs of race-sensitive admissions have been modest and well-justified by the benefits.

The ''opportunity cost'' of admitting any particular student is that another applicant will not be chosen. But such choices are rarely ''head-to-head'' decisions. For example, there is no reason to believe—as reverse-discrimination lawsuits generally assume—that if a particular minority student had not been accepted, his or her place would have been given to a complainant with comparable or better test scores or grades. The choice might, instead, have been an even higher-scoring minority student who had not been admitted, a student from a foreign country, or a lower-scoring white student from one of several subgroups that are given extra consideration in the admissions process. Making hard choices on the margin is never easy and always—fortunately—involves human judgments made by experienced admissions officers. It is, in any case, wrong to assume that race-sensitive admissions policies have significantly reduced the changes of well-qualified white students to gain admission to the most selective colleges. Findings reported in The Shape of the River, based on data for a subset of selective colleges and universities, demonstrate that elimination of race-sensitive policies would have increased the admission rate for white students by less than two percentage points: from roughly 25 percent of 26.5 percent.

It should be emphasized that taking race into account in making admissions decisions does not appear to have two kinds of costs often mentioned by critics of these policies.

First, there is no systemic evidence that race-sensitive admissions policies tend to ''harm the beneficiaries'' by putting them in settings in which they are overmatched intellectually or ''stigmatized'' to the point that they would have been better off attending a less selective institution. On the contrary, extensive analysis of data reported in The Shape of the River shows that minority students at selective schools have, overall, performed well. The more selective the school that they attended, the more likely they were to graduate and earn advanced degrees, the happier they were with their college experience, and the more successful they were in later life.

Second, the available evidence disposes of the argument that the substitution of ''race-sensitive'' for ''race-neutral'' admissions policies has led to admission of many minority students who are not well-suited to take advantage of the educational opportunities they are being offered. Examination of the later accomplishments of those students who would have been ''retrospectively rejected'' under race-neutral policies shows that they did just as well as a hypothetical reference group that might have been admitted if GPAs and test scores had been the primary criteria (which is, itself, a questionable assumption). There are no significant differences in graduation rates, advanced-degree attainment, earnings, civic contributions, or satisfactions with college. In short, the abandonment of race-sensitive admissions would not have removed from campuses a marginal group of mediocre students. Rather, it would have deprived campuses of much of their diversity and diminished the capacity of the academically selective institutions to benefit larger numbers of talented minority students.

6. Progress has been made in narrowing test-score gaps between minority students and other students, but gaps remain.

A frequently asked question is: Are we getting anywhere? Data on average test scores in Reclaiming the Game are encouraging. At a group of liberal-arts colleges and universities examined in 1976 and 1995, average combined SAT test scores for minority students rose roughly 130 points at the liberal-arts colleges and roughly 150 points at the research universities. Test scores for other students rose, too, but by much smaller amounts (roughly 30 points at the liberal-arts colleges and roughly 70 points at the research universities). Test-score gaps narrowed over this period, and the average rank-in-class of minority students on college graduation improved even more than one would have predicted on the basis of test scores alone. As anyone who has studied campus life can attest, there are also many impressionistic signs of progress. Minority students are more involved in a wide range of activities, and increasing numbers of children of minority students of an earlier day are now reaching the age where they are beginning to enroll as ''second generation'' college students. Graduates are also increasingly making their presence known in the professions and business world.

Still, test-score gaps remain (of roughly 100 to 140 points in the private colleges and universities for which we have data), and so there is still more progress to be made. That is hardly surprising, given the deep-seated nature of the factors that impede academic opportunity and achievement among minority groups—including the fact that a very large proportion of such students continue to attend primary and secondary schools that are underfinanced, insufficiently challenging, and often segregated. It would be naive to expect that a problem as long in the making as the racial divide in educational preparation could be eradicated in a generation or two.

7. There are alternative ways of pursuing diversity, but all substitutes for race-sensitive admissions have serious limitations.

Many of us have a strong appetite for apparently painless alternatives, and it is natural to look for ways to achieve ''diversity'' without directly confronting the emotion-laden issue of race. Several alternatives to race-sensitive admissions have been suggested. For example, colleges and universities have been urged to:

Focus on the economically disadvantaged. The argument is that, since racial minorities are especially likely to be poor, racial diversity could be promoted in this way (an approach sometimes referred to as ''class-based affirmative action''). The results, however, would not be what some people might expect. Several studies have shown that there are simply very few minority candidates for admission to academically selective institutions who are both poor and academically qualified.

Adopt a ''percentage plan'' whereby all high-school students in a state who graduate in the top X percent of their classes are automatically guaranteed a place in one of the state's universities. In states like Texas, where the secondary-school system is highly segregated, that approach can yield a significant number of minority admissions at the undergraduate level (although the actual effects, even at the undergraduate level, have been shown by the social scientists Marta Tienda and John F. Kain to be more limited than many have suggested). Moreover, the process is highly mechanical. Students in the top X percent are not simply awarded ''points,'' as the undergraduate program at the University of Michigan does. Rather, they are given automatic admission without any prior scrutiny, and without any consideration of the fact that some high schools are much stronger academically than others.

Even if one considered the top-X-percent plan to be viable at state institutions, it could not work at all at private institutions, which admit from national and international pools of applicants and are so selective that they must turn down the vast majority who apply—including very large numbers of students who graduate at or near the top of their secondary-school classes. Private institutions could not conceivably adopt a policy that would automatically give admission to students in the top X percent of their class at the hundreds and hundreds of schools—worldwide—from which they attract applicants.

The top-X-percent plan is also entirely ineffective at the professional and graduate-school level, because (like selective undergraduate colleges) these schools have national and international applicant pools, with no conceivable ''reference group'' of colleges to which they could possibly give such an admission guarantee. Even if there were a set of undergraduate colleges whose top graduates would be guaranteed admission to certain professional schools, the result would not represent any marked degree of racial diversity. For example, if the top 10 percent of students in the academically selective colleges and universities studied in Reclaiming the Game were offered admission to a professional school (an unrealistically high percentage given the intensely competitive nature of the admission process), only 3 percent of the students included in that group would be underrepresented minorities—and, of course, only some modest fraction of those students would be interested even in applying to such programs. If we are examining a top-5-percent plan, the minority component of the pool would be about one-half of 1 percent. Without some explicit consideration of race, professional schools that ordinarily admit a significant number of their students from selective colleges would simply not be able to enroll a diverse student body.

Other troubling questions include: Do we really want to endorse an admissions approach that depends on de facto segregation

at the secondary-school level? Do we want to impose an arbitrary and mechanical admissions standard—based on fixed rank-in-class—on a process that should involve careful consideration of all of an applicant's qualifications as well as thoughtful attention to the overall characteristics of the applicant pool?

Place heavy weight on ''geographic distribution'' and so-called ''experiential'' factors, such as a student's ability to overcome obstacles and handicaps of various kinds, or the experience of living in a home where a language other than English is spoken. The argument here is that, if special attention were given to these and analogous criteria, then a sizable pool of qualified minority students would automatically be created.

But, as we have mentioned, colleges have been using precisely such criteria for many decades, and they have discovered—not surprisingly—that there are large numbers of very competitive ''majority'' candidates in all of the suggested categories. For example, if a student's home language is Russian, Polish, Arabic, Korean, or Hebrew, will that be weighted by a college as strongly as Spanish? If not, then the institutions will clearly be giving conscious preference to a group of underrepresented minority students—Hispanic students—in a deliberate way that explicitly takes ethnicity (or, in other cases, race) into account.

Similar issues arise with respect to other experiential categories, as well as geographic distribution. There is no need to speculate about (or experiment with) such approaches, because colleges have already had nearly a half century of experience applying them, and there is ample evidence that the hoped-for results, in terms of minority representation, are not what many people now suggest or claim. Moreover, insofar as such categories were to become surreptitious gateways for minority students, they would soon run the risk of breeding cynicism, and almost certainly inviting legal challenges.

All of the indirect approaches just described pose serious problems. Nor can they be accurately described as ''race-neutral.'' They have all been proposed with the clear goal (whether practicable or not) of producing an appreciable representation of minority students in higher education. In some cases, they involve the conscious use of a kind of social engineering decried by critics of race-sensitive admissions.

Surely the best way to achieve racial diversity is to acknowledge candidly that minority status is one among many factors that can be considered in an admissions process designed to judge individuals on a case-by-case basis. We can see no reason why a college or university should be compelled to experiment with—and ''exhaust''—all suggested alternative approaches before it can turn to a carefully tailored race-sensitive policy that focuses on individual cases. The alternative approaches are susceptible to systematic analysis, based on experience and empirical investigation. A preponderance of them have been tested for decades. All can be shown to be seriously deficient. Indeed, if genuinely race-neutral (and educationally appropriate) methods were available, colleges and universities would long ago have gladly embraced them.

8. Reasonable degrees of institutional autonomy should be permitted—accompanied by a clear expectation of accountability.

As the courts have recognized in other contexts (for example, in giving reasonable deference to administrative agencies), a balance has to be struck between judicial protection of rights guaranteed to all of us by the Constitution and the desirability of giving a presumption of validity to the judgments of those with special knowledge, experience, and closeness to the actual decisions being made. The widely acclaimed heterogeneity of the American system of higher education has permitted much experimentation in admissions, as in other areas, and has discouraged the kinds of government-mandated uniformity that we find in many other parts of the world. Serious consideration should be given to the disadvantages of imposing too many ''do's'' and ''don'ts'' on admissions policies.

The case for allowing a considerable degree of institutional autonomy in such sensitive and complex territory is inextricably tied, in our view, to a clear acceptance by colleges and universities of accountability for the policies they elect and the ways such policies are given effect. There is, to be sure, much more accountability today than many people outside the university world recognize. Admissions practices are highly visible and are subject to challenge by faculty members, trustees and regents, avid investigative reporters, disappointed applicants, and the public at large. Colleges and universities operate in more of a ''fishbowl'' environment than the great majority of other private and public entities. Nonetheless, we favor even stronger commitments by colleges and universities to monitor closely how specific admissions policies work out in practice. Studies of outcomes should be a regular part of college and university operations, and if it is found, for example, that minority students (or other students) accepted with certain test scores or other qualifications are consistently doing poorly, then some change in policy—or some change in the personnel responsible for administering the stated policy—may well be in order.

That point was made with special force by a very conservative friend of ours, Charles Exley, former chairman and CEO of NCR Corporation and a onetime trustee of Wesleyan University. In a pointed conversation that one of us (Bowen) will long remember, Exley explained that he held essentially the same view that we hold concerning who should select the criteria and make admissions decisions. ''I would probably not admit the same class that you would admit, even though I don't know how different the classes would be,'' he said. ''You will certainly make mistakes,'' he went on, ''but I would much rather live with your errors than with those that will inevitably result from the imposition of more outside constraints, including legislative and judicial interventions.'' And then, with the nicest smile, he concluded: ''And, if you make too many mistakes, the trustees can always fire you!''

9. Race matters profoundly in America; it differs fundamentally from other ''markers'' of diversity, and it has to be understood on its own terms.

We believe that it is morally wrong and historically indefensible to think of race as ''just another'' dimension of diversity. It is a critically important dimension, but it is also far more difficult than others to address. The fundamental reason is that racial classifications were used in this country for more than 300 years in the most odious ways to deprive people of their basic rights. The fact that overt discrimination has now been outlawed should not lead us to believe that race no longer matters. As the legal scholar Ronald Dworkin has put it, ''the worst of the stereotypes, suspicions, fears, and hatreds that still poison America are color-coded . . .''

The after effects of this long history continue to place racial minorities (and especially African-Americans) in situations in which embedded perceptions and stereotypes limit opportunities and create divides that demean us all. This social reality, described with searing precision by the economist Glenn C. Loury in The Anatomy of Racial Inequality, explains why persistence is required in efforts to overcome, day by day, the vestiges of our country's ''unlovely racial history.'' We believe that it would be perverse in the extreme if, after many generations when race was used in the service of blatant discrimination, colleges and universities were now to be prevented from considering race at all, when, at last, we are learning how to use nuanced forms of race-sensitive admissions to improve education for everyone and to diminish racial disparities.

The former Attorney General Nicholas Katzenbach draws a sharp distinction between the use of race to exclude a group of people from educational opportunity (''racial discrimination'') and the use of race to enhance learning for all students, thereby serving the mission of colleges and universities chartered to serve the public good. No one contends that white students are being excluded by any college or university today simply because they are white.

William G. Bowen is president emeritus of Princeton University and president of the Andrew W. Mellon Foundation. He is the co-author, with Derek Bok, of The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions (Princeton University Press, 1998) and, with Sarah A. Levin, of Reclaiming the Game: College Sports and Educational Values (Princeton University Press, forthcoming in 2003). Neil L. Rudenstine is president emeritus of Harvard University and chairman of the board of ARTstor. His extended essay ''Diversity and Learning'' (The President's Report: 1993–1995, Harvard University) focuses on the value of diversity in higher education from the mid-19th century to the present.

THE IMPORTANCE OF TITLE IX

Mr. LEAHY. Mr. President, today the Commission on Opportunity in Athletics sent Secretary Rod Paige their recommendations to change the landmark gender equity law—Title IX.

Two members of the Commission—Julie Foudy and Donna de Varona—decided not to sign the report and instead submitted a minority report because they found the final report slanted, incomplete, and failing to acknowledge that discrimination against women in education still exists. I am very disappointed the Commission did not write a more balanced report, which all members would have felt comfortable signing.

Since its passage more than 30 years ago as part of the Education Amendments of 1972, Title IX has played a monumental role in the advancement of equality for women throughout America. This landmark legislation has opened the doors to colleges, universities and sports team locker rooms for our sisters, daughters and friends. Women's participation in sports has dramatically increased so that women now make up about 40 percent of all college athletics, compared with 15 percent in 1972. Studies have shown that women who participate in athletics learn important values such as, teamwork, leadership, and discipline—values that stay with them throughout their lives.

On January 29, Senators DASCHLE, SNOWE, KENNEDY, SPECTER, MURRAY

and I wrote to Education Secretary Rod Paige urging him to defend and strengthen the enforcement of current Title IX policies and regulations. Today, I joined those same Senators in a letter urging President Bush to reaffirm the current policies under Title IX and to reject the changes to those policies proposed by the Commission.

Over the past 30 years, Title IX has been a good and fair law and it should not be weakened in any way. I urge President Bush and Education Secretary Rod Paige to give as much consideration to the report filed by Julie Foudy and Donna de Varona as they do to the majority report and to ultimately reject any efforts to weaken Title IX and its goal to address widespread sex discrimination in athletics and all other aspects of education.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred in March 2001 in Portage, WI. A gay man was found murdered in an apartment. The assailant, Darrin Grosskopf, was drinking with the victim, Keith Ward, and claimed that Ward made sexual advances toward him. Grosskopf told police that he thought Ward was a homosexual. When police found Ward's body in the apartment, he was naked and had a stab wound in his chest.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

RULES OF THE SENATE: PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Ms. COLLINS. Mr. President, Senate Standing Rule XXVI requires each committee to adopt rules to govern the procedure of the Committee and to publish those rules in the CONGRESSIONAL RECORD not later than March 1 of the first year of each Congress. On February 26, 2003, a majority of the members of the Committee on Governmental Affairs' Permanent Subcommittee on Investigations adopted subcommittee rules of procedure.

Consistent with Standing Rule XXVI, I ask unanimous consent to have printed in the RECORD a copy of the rules of the Permanent Subcommittee on Investigations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

108TH CONGRESS RULES OF PROCEDURE FOR THE SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS AS ADOPTED—FEBRUARY 26, 2003

1. No public hearing connected with an investigation may be held without approval of either the Chairman and the Ranking Minority Member or the approval of a majority of the Members of the Subcommittee. In all cases, notification to all Members of the intent to hold hearings must be given at least 7 days in advance to the date of the hearing. The Ranking Minority Member should be kept fully apprised of preliminary inquiries, investigations, and hearings. Preliminary inquiries may be initiated by the Subcommittee majority staff upon the approval of the Chairman and notice of such approval to the Ranking Minority Member or the minority counsel. Preliminary inquiries may be undertaken by the minority staff upon the approval of the Ranking Minority Member and notice of such approval to the Chairman or Chief Counsel. Investigations may be undertaken upon the approval of the Chairman of the Subcommittee and the Ranking Minority Member with notice of such approval to all members.

No public hearing shall be held if the minority Members unanimously object, unless the full Committee on Governmental Affairs by a majority vote approves of such public hearing.

Senate Rules will govern all closed sessions convened by the Subcommittee (Rule XXVI, Sec. 5(b), Standing Rules of the Senate).

2. Subpoenas for witnesses, as well as documents and records, may be authorized and issued by the Chairman, or any other Member of the Subcommittee designated by him, with notice to the Ranking Minority Member. A written notice of intent to issue a subpoena shall be provided to the Chairman and Ranking Minority Member of the Committee, or staff officers designated by them, by the Subcommittee Chairman or a staff officer designated by him, immediately upon such authorization, and no subpoena shall issue for at least 48 hours, excluding Saturdays and Sundays, from delivery to the appropriate offices, unless the Chairman and Ranking Minority Member waive the 48 hour waiting period or unless the Subcommittee Chairman certifies in writing to the Chairman and Ranking Minority Member that, in his opinion, it is necessary to issue a subpoena immediately.

3. The Chairman shall have the authority to call meetings of the Subcommittee. This authority may be delegated by the Chairman to any other Member of the Subcommittee when necessary.

4. If at least three Members of the Subcommittee desire the Chairman to call a special meeting, they may file in the office of the Subcommittee, a written request therfor, addressed to the Chairman. Immediately thereafter, the clerk of the Subcommittee shall notify the Chairman of such request. If, within 3 calendar days after the filing of such request, the Chairman fails to call the requested special meeting, which is to be held within 7 calendar days after the filing of such request, a majority of the Subcommittee Members may file in the office of the Subcommittee their written notice that a special Subcommittee meeting will be held, specifying the date and hour thereof, and the Subcommittee shall meet on that date and hour. Immediately upon the filing of such notice, the Subcommittee clerk shall notify all Subcommittee Members that such special meeting will be held and inform them of its dates and hour. If the Chairman is not present at any regular, additional or special meeting, the ranking majority Member present shall preside.

5. For public or executive sessions, one Member of the Subcommittee shall constitute a quorum for the administering of oaths and the taking of testimony in any given case or subject matter.

Five (5) Members of the Subcommittee shall constitute a quorum for the transaction of Subcommittee business other than the administering of oaths and the taking of testimony.

6. All witnesses at public or executive hearings who testify to matters of fact shall be sworn.

7. If, during public or executive sessions, a witness, his counsel, or any spectator conducts himself in such a manner as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of such hearing, the Chairman or presiding Member of the Subcommittee present during such hearing may request the Sergeant at Arms of the Senate, his representation or any law enforcement official to eject said person from the hearing room.

8. Counsel retained by any witness and accompanying such witness shall be permitted to be present during the testimony of such witness at any public or executive hearing, and to advise such witness while he/she is testifying, or his legal rights, Provided, however, that in the case of any witness who is an officer or employee of the government, or of a corporation or association, the Subcommittee Chairman may rule that representative by counsel from the government, corporation, or association, or by counsel representing other witnesses, creates a conflict of interest, and that the witness may only be represented during interrogation by staff or during testimony before the Subcommittee by personal counsel not from the government, corporation, or association, or by personal counsel not representing other witnesses. This rule shall not be construed to excuse a witness from testifying in the event his counsel is ejected for conducting himself in such a manner so as to prevent, impede, disrupt, obstruct, or interfere with the orderly administration of the hearings; nor shall this rule be construed as authorizing counsel to coach the witness or answer for the witness. The failure of any witness to secure counsel shall not excuse such witness from complying with a subpoena or deposition notice.

9. Depositions.

9.1 Notice. Notices for the taking of depositions in an investigation authorized by the Subcommittee shall be authorized and issued by the Chairman. The Chairman of the full Committee and the Ranking Minority Member of the Subcommittee shall be kept fully apprised of the authorization for the taking of depositions. Such notices shall specify a time and place of examination, and the name of the Subcommittee Member or Members or staff officer or officers who will take the deposition. The deposition shall be in private. The Subcommittee shall not initiate procedures leading to criminal or civil enforcement proceedings for a witness' failure to appear unless the deposition notice was accompanied by a Subcommittee subpoena.

9.2 Counsel. Witnesses may be accompanied at a deposition by counsel to advise them of their legal rights, subject to the provisions of Rule 8.

9.3 Procedure. Witnesses shall be examined upon oath administered by an individual authorized by local law to administer oaths. Questions shall be propounded orally by Subcommittee Members or staff. Objections by the witness as to the form of questions shall

be noted for the record. If a witness objects to a question and refuses to testify on the basis of relevance or privilege, the Subcommittee Members or staff may proceed with the deposition, or may, at that time or at a subsequent time, seek a ruling by telephone or otherwise on the objection from the Chairman or such Subcommittee Member as designated by him. If the Chairman or designated Member overrules the objection, he/she may refer the matter to the Subcommittee or he/she may order and direct the witness to answer the question, but the Subcommittee shall not initiate procedures leading to civil or criminal enforcement unless the witness refuses to testify after he/she has been ordered and directed to answer by a Member of the Subcommittee.

9.4 Filing. The subcommittee staff shall see that the testimony is transcribed or electronically recorded. If it is transcribed, the witness shall be furnished with a copy for review pursuant to the provisions of Rule 12. The individual administering the oath shall certify on the transcript that the witness was duly sworn in his presence, the transcriber shall certify that the transcript is a true record of the testimony, and the transcript shall then be filed with the Subcommittee clerk. Subcommittee staff may stipulate with the witness to changes in this procedure; deviations from this procedure which do not substantially impair the reliability of the record shall not relieve the witness from his obligation to testify truthfully.

10. Any witness desiring to read a prepared or written statement in executive or public hearings shall file a copy of such statement with the Chief Counsel or Chairman of the Subcommittee 48 hours in advance of the hearings at which the statement is to be presented unless the Chairman and the Ranking Minority Member waive this requirement. The Subcommittee shall determine whether such statement may be read or placed in the record of the hearing.

11. A witness may request, on grounds of distraction, harassment, personal safety, or physical discomfort, that during the testimony, television, motion picture, and other cameras and lights shall not be directed at him. Such requests shall be ruled on by the Subcommittee Members present at the hearing.

12. An accurate stenographic record shall be kept of the testimony of all witnesses in executive and public hearings. The record of his own testimony whether in public or executive session shall be made available for inspection by witness or his counsel under Subcommittee supervision; a copy of any testimony given in public session or that part of the testimony given by the witness in executive session and subsequently quoted or made part of the record in a public session shall be made available to any witness at his expense if he/she so requests.

13. Interrogation of witnesses at Subcommittee hearings shall be conducted on behalf of the Subcommittee by Members and authorized Subcommittee staff personnel only.

14. Any person who is the subject of an investigation in public hearings may submit to the Chairman of the Subcommittee questions in writing for the cross-examination of other witnesses called by the Subcommittee. With the consent of a majority of the Members of the Subcommittee present and voting, these questions, or paraphrased versions of them, shall be put to the witness by the Chairman, by a Member of the Subcommittee or by counsel of the Subcommittee.

15. Any person whose name is mentioned or who is specifically identified, and who believes that testimony or other evidence presented at a public hearing, or comment made by a Subcommittee Member or counsel, tends to defame him or otherwise adversely affect his reputation, may (a) request to appear personally before the Subcommittee to testify in his own behalf, or, in the alternative, (b) file a sworn statement of facts relevant to the testimony or other evidence or comment complained of. Such request and such statement shall be submitted to the Subcommittee for its consideration and action.

If a person requests to appear personally before the Subcommittee pursuant to alternative (a) referred to herein, said request shall be considered untimely if it is not received by the Chairman of the Subcommittee or its counsel in writing on or before thirty (30) days subsequent to the day on which said person's name was mentioned or otherwise specifically identified during a public hearing held before the Subcommittee, unless the Chairman and the Ranking Minority Member waive this requirement.

If a person requests the filing of his sworn statement pursuant to alternative (b) referred to herein, the Subcommittee may condition the filing of said sworn statement upon said person agreeing to appear personally before the Subcommittee and to testify concerning the matters contained in his sworn statement, as well as any other matters related to the subject of the investigation before the Subcommittee.

16. All testimony taken in executive session shall be kept secret and will not be released for public information without the approval of a majority of the Subcommittee.

17. No Subcommittee report shall be released to the public unless approved by a majority of the Subcommittee and after no less than 10 days' notice and opportunity for comment by the Members of the Subcommittee unless the need for such notice and opportunity to comment has been waived in writing by a majority of the minority Members.

18. The Ranking Minority Member may select for appointment to the Subcommittee staff a Chief Counsel for the minority and such other professional staff members and clerical assistants as he/she deems advisable. The total compensation allocated to such minority staff members shall be not less than one-third the total amount allocated for all Subcommittee staff salaries during any given year. The minority staff members shall work under the direction and supervision of the Ranking Minority Member. The Chief Counsel for the minority shall be kept fully informed as to preliminary inquiries, investigations, and hearings, and shall have access to all material in the files of the Subcommittee.

19. When it is determined by the Chairman and Ranking Minority Member, or by a majority of the Subcommittee, that there is reasonable cause to believe that a violation of law may have occurred, the Chairman and Ranking Minority Member by letter, or the Subcommittee by resolution, are authorized to report such violation to the proper State, local and/or Federal authorities. Such letter or report may recite the basis for the determination of reasonable cause. This rule is not authority for release of documents or testimony.

EXPLANATION OF VOTE

Mr. NELSON of Nebraska. Mr. President, on Monday, February 24, I was unable to be present to vote on S. 151, the PROTECT Act, because I was part of the U.S. Presidential Delegation attending the inauguration of His Excellency Roh Moo-Huyn, President of the Republic of Korea. Had I been present I would have voted ''aye.''

ECONOMIC RECOVERY ACT

Mr. LEAHY. Mr. President, I rise today in support of Democratic Leader DASCHLE'S request to bring before the Senate the Economic Recovery Act of 2003, S. 414, which includes legislation I introduced last month: the First Responders Partnership Grant Act of 2003. I regret that Republicans objected to proceeding to these important matters when Senator DASCHLE requested we move to it yesterday.

I thank the Democratic leader for authoring this important economic stimulus package. In seeking to improve homeland security, I am proud that he saw fit to include the First Responders Partnership Grant Act—on which he, Democratic Whip REID and Senator BREAUX join me as cosponsors. This legislation will supply our Nation's first responders with the support they so desperately need to protect homeland security and prevent and respond to acts of terrorism.

I want to begin by thanking each of our Nation's brave firefighters, emergency rescurers, law enforcement officers, and other first responder personnel for the jobs they do for the American public day in and day out. Our public safety officers are often the first to respond to any crime or emergency situation. On September 11, the Nation saw that the first on the scene at the World Trade Center were the heroic firefighters, police officers and emergency personnel of New York City. These real-life heroes, many of whom gave the ultimate sacrifice, remind us of how important it is to support our State and local public safety partners.

But while we ask our Nation's first responders to defend us as never before on the front lines against the dark menace of domestic terrorism, we have failed to supply them with the Federal support they need and deserve to protect us, as we expect and need them to protect us.

Since February 7, 2003, the Federal Homeland Security Advisory System has kept State and local first responders on Orange Alert, a ''high'' condition indicating a high probability of a terrorist attack and when additional precautions by first responders are necessary at public events.

Since then, counterterrorism officials have warned that the threat of terrorist attacks on U.S. soil is at a higher level than in previous months due to the possibility of impending military action against Iraq. This is the second time since September 11, 2001, that the national warning level has been at Orange Alert—from September 10 to September 24 last year, Attorney General Ashcroft declared our country at Orange Threat level.

From March 12, 2002, until this month, we were at Yellow Alert, an ''elevated'' threat level declared when

there is a significant risk of terrorist attacks, requiring increased surveillance of critical locations.

Counties, cities and towns in my home State of Vermont and across the U.S. find themselves overwhelmed by increasing homeland security costs required by the Federal Government. Indeed, the National Governors Association estimates that States incurred around $7 billion in security costs over the past year alone.

As a result, the national threat alerts and other Federal homeland security requirements have become unfunded Federal mandates on our State and local governments. Rutland County Sheriff R.J. Elrick, president of the Vermont Sheriffs' Association, recently wrote to me, ''We are in dire need of financial support to keep our personnel trained and equipped to meet the challenges here as home as we continue our vigilant commitment to fight terrorism.''

When terrorists strike, first responders are and will always be the first people we turn to for help. We place our lives and the lives of our families and friends in the hands of these officers, trusting that when called upon they will protect and save us.

Just how, without supplying them with the necessary resources, do we expect our Nation's first responders to realistically carry out their duties?

Our State and local law enforcement officers, firefighters and emergency personnel are full partners in preventing, investigating and responding to terrorist acts. They need and deserve the full collaboration of the Federal Government to meet these new national responsibilities.

Washington is buzzing about the literally hundreds of billions of additional dollars the President plans to ask Congress to provide for our military services to fight the war on terrorism abroad. The same cannot be said for helping security here at home, which is shamefully overlooked.

For a year and a half I have been working hard to remedy that, with allies like our distinguished Democratic leader and assistant Democratic leader, and New York Senators SCHUMER and CLINTON. As former chair and now ranking member of the Judiciary Committee, I have made it a high priority to evaluate and meet the needs of our first responders.

For these reasons, I commend the Democratic leader for including in the homeland security section of his economic stimulus package the First Responders Partnership Grant Act, which will give our Nation's law enforcement officers, firefighters and emergency personnel the resources they need to do their jobs. This legislation will establish a grant program at the Department of Homeland Security to provide $5 billion nationwide for current fiscal year to support State and local public safety officers in their efforts to protect homeland security and prevent and respond to acts to terrorism.

Similar to the highly successful Department of Justice Community Oriented Policing Services (COPS) and the Bulletproof Vest Partnership Grant Programs, the First Responder Grants will be made directly to State and local government units for overtime, equipment, training and facility expenses to support our law enforcement officers, firefighters and emergency personnel.

The First Responder Grants may be used to pay up to 90 percent of the cost of the overtime, equipment, training or facility. In cases of fiscal hardship, the Department of Homeland Security may waive the local match requirement of 10 percent to provide Federal funds for communities that cannot afford the local match.

In a world shaped by the violent events of September 11, day after day we call upon our public safety officers to remain vigilant. We not only ask them to put their lives at risk in the line of duty, but also, if need be, given their lives to protect us.

If we take time to listen to our Nation's State and local public safety partners, they will tell us that they welcome the challenge to join in our national mission to protect our homeland security. But we cannot ask our firefighters, emergency personnel, and law enforcement officers to assume these new national responsibilities without also providing new Federal support.

The First Responders Partnership Grant Act will provide the necessary Federal support for our State and public safety officers to serve as full partners in the fight to protect our homeland security. We need our first responders for the security and the lifesaving help they bring to our communities. All they ask is for the tools they need to do their jobs for us. And for the sake of our own security, that is not too much to ask.

I commend Senator DASCHLE for his leadership, and hope that the Senate will soon consider this desperately-needed economic stimulus package.

EXPENDITURES OF COMMITTEES

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 66, which was submitted earlier today by Senators LOTT and DODD.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 66) authorizing expenditures by committees of the Senate for the periods March 1, 2003, through September 30, 2003, October 1, 2003, through September 30, 2004, and October 1, 2004, through February 28, 2005.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to and the motion to reconsider be laid upon the table without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 66) was agreed to.

(The resolution is printed in today's RECORD under ''Statements on Submitted Resolutions.'')

ADDITIONAL STATEMENTS

2004 SUMMER OLYMPIC GAMES

● Mrs. CLINTON. Mr. President, today, thousands of American athletes are training for the ultimate goal of participating in the 2004 summer Olympic Games in Athens Greece. Americans will have to wait until next summer to applaud their efforts, but we can start applauding another Olympic star today—Nadia Weinberg.

A Michigan native, Ms. Weinberg is a member of the Orchestra of Athens and she deserves a gold medal for her beautiful voice and her commitment to helping those who are less fortunate than she.

In order to celebrate the games' return to Greece, the Orchestra of Athens and Ms. Weinberg will conduct a world tour including a 15-city tour in America. They will visit New York City, Washington D.C., Boston, and Detroit to name a few. Each concert will benefit a number of charitable organizations: children's abuse centers, college scholarship funds, soup kitchens, homeless shelters, and children's hospitals. Ms. Weinberg and the Orchestra of Athens are using their gift of music to help spread the goodwill of the Olympic Games here in America and around the world.

We can all be proud that Ms. Weinberg is representing her country with such grace. She has performed in music halls around the world, impressed audiences in Carnegie Hall, the Kennedy Center, and filled the Rotunda of the Capitol with her voice. Each performance shows that the arts have always been a bridge of understanding between cultures.

I can think of no finer American—one who is dedicated to helping others, committed to the arts, and determined to encourage goodwill around the world—than Ms. Weinberg. We are proud of her accomplishments and her participation in this endeavor with the Orchestra of Athens, and we are honored that she is representing the United States around the world.●

HONORING MARION HIGH SCHOOL

● Mr. JOHNSON. Mr. President, on April 26, 2003, more than 1,200 students from across the United States will visit Washington, DC to compete in the national finals of the We the People: The Citizen and the Constitution program, the most extensive educational program in the country developed specifically to educate young people about

the Constitution and the Bill of Rights. Administered by the Center for Civic Education, the We the People program is funded by the U.S. Department of Education by act of Congress.

I am proud to announce that the class from Marion High School will represent the State of South Dakota in this national event. These young scholars have worked conscientiously to reach the national finals by participating at local and statewide competitions. As a result of their experience they have gained a deep knowledge and understanding of the fundamental principles and values of our constitutional democracy.

The 3-day We the People national competition is modeled after hearings in the United States Congress. The hearings consist of oral presentations by high school students before a panel of adult judges on constitutional topics. The students are given an opportunity to demonstrate their knowledge while they evaluate, take, and defend positions on relevant historical and contemporary issues. Their testimony is followed by a period of questioning by the judges who probe the students' depth of understanding and ability to apply their constitutional knowledge.

The We the People program provides curricular materials at upper elementary, middle, and high school levels. The curriculum not only enhances students' understanding of the institutions of American constitutional democracy, it also helps them identify the contemporary relevance of the Constitution and Bill of Rights. Critical thinking exercises, problem-solving activities, and cooperative learning techniques help develop participatory skills necessary for students to become active, responsible citizens.

The class from Marion High School is currently preparing for their participation in the national competition in Washington, DC. It is inspiring to see these young people advocate the fundamental ideals and principles of our government, ideas that identify us as a people and bind us together as a nation. It is important for future generations to understand these values and principles which we hold as standards in our endeavor to preserve and realize the promise of our constitutional democracy. I wish these young ''constitutional experts'' the best of luck at the We the People national finals.●

HONORING ALBERT W. SISK

● Mr. BUNNING. Mr. President, I have the privilege and honor of rising today to recognize Mr. Albert W. Sisk of Hopkinsville, KY. Earlier this month, Mr. Sisk was honored as Kentucky's nominee for the 2003 TIME Magazine Quality Dealer Award at the National Automobile Dealers Association convention.

Mr. Sisk is the president and dealer principle of Sisk Auto Mall located in Hopkinsville. One of the most distinguishing features of Mr. Sisk's business philosophy is his commitment to family. Mr. Sisk is a second-generation car dealer and he contributes his success to the knowledge he gained from working alongside his father, a torch he now passes to his son who is General Manager of Sisk Auto Mall.

Mr. Sisk is certainly no stranger to community involvement. Aside from his current service in the private sector, Mr. Sisk once served his country as a member of the United States Army upon graduation from the University of Kentucky in 1965. Now he focuses his attention on helping young adults excel in academics and their future careers. He is an active member of the YMCA, Rotary Club, First Christian Church and the Elizabeth Stone Educational Fund Advisory Board.

Business and personal honors aside, Mr. Sisk cites having the opportunity to work with his father the most rewarding aspect of his career. It is not often we have the chance to honor such a distinguished business man, community member, and family man. Please join me in congratulating Mr. Albert W. Sisk.●

IN APPRECIATION OF MAJOR GENERAL PHILIP G. KILLEY

● Mr. JOHNSON. Mr. President, I rise today to express my profound appreciation for the work MG Philip G. Killey has provided as the adjutant general for the South Dakota National Guard. General Killey has announced that he will be retiring after 40 years of service, and I would like to take this opportunity to thank him for the extraordinary work he has done for this country and for the South Dakota National Guard.

General Killey reports that South Dakota has continued its high rankings in terms of readiness of its National Guard units. South Dakota's units also excel in the quality of its new recruits. I commend the South Dakota National Guard for its continued excellence, and General Killey for his leadership, which has led to the maintenance of this high standard. National rankings only confirm the quality that has come to be expected of the National Guard of a great State.

Most South Dakotans know at least 1 of the 4,500 current members of the South Dakota National Guard or the thousands of former guardsmen. Sometimes, the connection is even more direct. My oldest son Brooks was a proud member of the South Dakota Army National Guard in Yankton prior to his active duty service with the U.S. Army.

Every community in my State benefits from the work of these guardsmen. Following the tradegies of September 11, guardsmen were called to assist in the campaign against terrorism and performed security duties at airports around the State. From Aberdeen to Yankton, the Guard is a key member of the South Dakota community.

In addition to the support the National Guard provides to South Dakota, it has also supported overseas operations including those in Central America, the Middle East, Europe, and Asia. Units around the State have been activated this year, deploying to military bases across our country and around the world.

These latest activities, and the professionalism that our South Dakota National Guardsmen have shown, are a testimony to the leadership of General Killey. Before becoming the adjutant general in 1998, General Killey served with distinction in both the active duty and in the South Dakota National Guard.

General Killey received his commission in 1963 through Officer Training School, at Lackland AFB in Texas. He served a tour in Southeast Asia in 1967–1968 flying the F–4 with the 8th Tactical Fighter Wing at Ubon Royal Thai Air Force Base, Thailand. He left active duty in 1969 and joined the Air National Guard in 1970. He held various positions with the South Dakota Air National Guard before becoming the adjutant general. He was recalled to active duty as director of the Air National Guard from 1988 until 1994. General Killey was the first guardsman to serve as commander, 1st Air Force, Air Combat Command, and Continental United States North American Aerospace Defense Command Region, Tyndall Air Force Base, Florida, from 1994 until 1998.

I enthusiastically commend General Killey for his many years of service, and thank him for all that he has done for this Nation and for our great State of South Dakota. I wish him and his wife Ellen all the very best as they move on to new challenges and opportunities.●

TRIBUTE TO KING DAVID HOLMES, SR.

● Mr. DODD. Mr. President, I rise to pay tribute to the late King David Holmes, Sr., a life-long resident and civil rights leader from the city of Waterbury, CT.

''King David,'' as he was affectionately known, was born and raised in Waterbury. After graduating from Crosby High School in 1940, he served in the Army during World War II. Returning to Waterbury after his tour of duty, King David worked at Scoville Manufacturing for 30 years, retiring as a shop foreman. He also spent 11 years working for the former Connecticut Department of Human Resources, now known as the Department of Social Services.

As the civil rights movement came to its own in the late 1950s and early 1960s, King David quickly became a local leader in advocating the needs of Waterbury's African-American community. He organized marches and protests against businesses and schools in the city practicing discrimination. He also founded the Waterbury Black Democratic Club and chaired New Opportunities for Waterbury, Inc., which

successfully financed the construction of new housing for low-income individuals and families in North Square.

As a member of the Waterbury Democratic Town Committee, King David sought to organize the city's African-American community politically. He strongly promoted local and State African-American political leaders and worked on the Senatorial campaigns of Abraham Ribicoff and my father, Thomas Dodd, both of whom fully supported equal rights. In this regard, I am pleased to say that my family has greatly cherished the friendship and support of this fine man and his family.

King David was known for his open mind and willingness to work with all people for a better Waterbury and a better America. He will be sadly missed. But his social and political contributions will have a lasting impact for many years to come.

King David was predeceased by his daughter, Muriel. He is survived by three children, Patricia, Maria, and King David, Jr., by Erlynde Holmes DePina, and by ten grandchildren.●

MESSAGES FROM THE HOUSE

At 3:53 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 40. Concurrent Resolution permitting the use of the Rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust.

The message also announced that pursuant to 20 U.S.C. 4303, and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the Board of Trustees of Gallaudet University: Mr. LAHOOD of Illinois.

The message further announced that pursuant to section 815(a)(1) of the Congressional Recognition for Excellence in Arts Education Act (2 U.S.C. 815), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Congressional Recognition for Excellence in Arts Education Awards Board: Mr. MCKEON of California; and Mrs. BIGGERT of Illinois.

The message also announced that pursuant to 20 U.S.C. 4412, and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development: Mr. YOUNG of Alaska.

The message further announced that pursuant to section 2(a) of the National Cultural Center Act (20 U.S.C. 76h(a)), as amended by Public Law 107–117, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Trustees of the John F. Kennedy Center for the Performing Arts: Mr. KOLBE of Arizona; and Ms. PRYCE of Ohio.

The message also announced that pursuant to Executive Order No. 12131, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the President's Export Council: Mr. ENGLISH of Pennsylvania; Mr. PICKERING of Mississippi; and Mr. HAYES of North Carolina.

The message further announced that pursuant to sections 5580 and 5581 of the Revised Statutes (20 U.S.C. 42–43), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Regents of the Smithsonian Institution: Mr. REGULA of Ohio; and Mr. SAM JOHNSON of Texas.

The message also announced that pursuant to 10 U.S.C. 9355(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Mr. YOUNG of Florida; and Mr. HEFLEY of Colorado.

The message further announced that pursuant to 46 U.S.C. 1295b(h), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Merchant Marine Academy: Mr. KING of New York.

The message also announced that pursuant to 14 U.S.C. 194(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Coast Guard Academy: Mr. SIMMONS of Connecticut.

The message further announced that pursuant to 10 U.S.C. 4355(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Military Academy: Mr. TAYLOR of North Carolina; and Mrs. KELLY of New York.

The message also announced that pursuant to 10 U.S.C. 6968(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Naval Academy: Mr. CUNNINGHAM of California; and Mr. GILCHREST of Maryland.

The message further announced that pursuant to 22 U.S.C. 6913, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Congressional-Executive Commission on the People's Republic of China: Mr. LEACH of Iowa, Chairman; Mr. BEREUTER of Nebraska; Mr. DREIER of California; Mr. WOLF of Virginia; and Mr. PITTS of Pennsylvania.

The message also announced that pursuant to section 5(a)(2) of the Benjamin Franklin Tercentenary Commission Act (36 U.S.C. 101 note), and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the Benjamin Franklin Tercentenary Commission: Mr. CASTLE of Delaware.

The message further announced that pursuant to 44 U.S.C. 2501, and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the National Historical Publications and Records Commission: Mr. COLE of Oklahoma.

The message also announced that pursuant to section 5(a) of the Abraham Lincoln Bicentennial Commission Act (36 U.S.C. 101 note), and the order of the House of January 8, 2003, the Speaker appoints the following Member of the House of Representatives to the Abraham Lincoln Bicentennial Commission: Mr. LAHOOD of Illinois.

The message further announced that pursuant to 15 U.S.C. 1024(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Joint Economic Committee: Mr. RYAN of Wisconsin; Ms. DUNN of Washington; Mr. ENGLISH of Pennsylvania; Mr. PUTNAM of Florida; and Mr. PAUL of Texas.

The message also announced that pursuant to the National Foundation on the Arts and the Humanities Act of 1965 (20 U.S.C. 955(b) note), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the National Council on the Arts: Mr. BALLENGER of North Carolina; and Mr. MCKEON of California.

The message further announced that pursuant to 2 U.S.C. 88b–3, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives Page Board: Mr. SHIMKUS of Illinois and Mrs. WILSON of New Mexico.

The message also announced that pursuant to 36 U.S.C. 2301, and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the United States Holocaust Memorial Council: Mr. LATOURETTE of Ohio; Mr. CANNON of Utah; and Mr. CANTOR of Virginia.

ENROLLED BILL AND JOINT RESOLUTION SIGNED

At 9:04 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolution:

H.R. 395. An act to authorize the Federal Trade Commission to collect fees for the implementation and enforcement of a ''do-not-call'' registry, and for other purposes.

H.J. Res. 19. A joint resolution recognizing the 92d birthday of Ronald Reagan.

The enrolled bill and joint resolution were signed subsequently by the President pro tempore (Mr. STEVENS).

MEASURE REFERRED

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 40. Concurrent resolution permitting the use of the rotunda of the Capitol for a ceremony as part of the commemoration of the days of remembrance of victims of the Holocaust; to the Committee on Rules and Administration.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1242. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Revenue Ruling 2003–21—Bureau of Labor Statistics Price Indexes for Department Stores—December 2002 (Rev. Rul. 2003–21)'' received on February 12, 2003; to the Committee on Finance.

EC–1243. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Extension of Equity Investment Prior to Allocation Deadline (Notice 2003–9)'' received on January 28, 2003; to the Committee on Finance.

EC–1244. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Applicable Federal Rates—March 2003 (Rev. Rul. 2003–26)'' received on February 24, 2003; to the Committee on Finance.

EC–1245. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Excise Tax Relating to Structure Settlement Factoring Transactions (RIN1545–BB24)'' received on February 24, 2003; to the Committee on Finance.

EC–1246. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''2003 Prevailing State Assumed Interest Rates (Rev. Ruling 2003–24)'' received on February 20, 2003; to the Committee on Finance.

EC–1247. A communication from the Chief, Regulations Branch, U.S. Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Single Entry for Split Shipments (RIN1515–AC91)'' received on February 20, 2003; to the Committee on Finance.

EC–1248. A communication from the Chief, Regulations Branch, U.S. Customs Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rules of Origin for Textile and Apparel Products (RIN1515–AC80)'' received on February 20, 2003; to the Committee on Finance.

EC–1249. A communication from the Regulations Officer, Office of Regulations, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Changes in the Retirement Age (AE–03)'' received on February 14, 2003; to the Committee on Finance.

EC–1250. A communication from the Regulations Officer, Office of Regulations, Social Security Administration, transmitting, pursuant to law, the report of a rule entitled ''Old-Age Survivors and Disability Insurance and Supplemental Security Income for the Aged, Blind and Disabled; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration (0960–AE97)'' received on February 20, 2003; to the Committee on Finance.

EC–1251. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation Air Quality Implementation Plans; Michigan; Excess Emissions During Startup, Shutdown or Malfunction (FRL 7442–9)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1252. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Maryland Miscellaneous Revisions (FRL 7450–2)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1253. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revisions to the Air Resource Regulations (FRL 7448–7)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1254. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Effluent Limitation Guidelines and New Source Performance Standards for the Metal Products and Machinery Point Source Category (FRL 7453–6)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1255. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (FRL 7448–1)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1256. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1257. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination to Stay and/or Defer Sanctions, Imperial County Air Pollution Control District (FRL7452–5)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1258. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District (FRL 7451–4)'' received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1259. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Statewide Transportation Planning, Metropolitan Transportation Planning (2125–AE95)'' received on February 24, 2003; to the Committee on Environment and Public Works.

EC–1260. A communication from the Chairman, Nuclear Regulatory Commission, transmitting, pursuant to law, the Nuclear Regulatory Commissions Monthly report on the status of its licensing and regulatory duties, received on February 20, 2003; to the Committee on Environment and Public Works.

EC–1261. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Small Municipal Waste Combustors: Final Federal Plan Requirements for Combustion Units Constructed on or Before August 30, 1999: Fact Sheet'' received on January 31, 2003 ; to the Committee on Environment and Public Works.

EC–1262. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a document entitled ''Complying with the Revised Drinking Water Standard for Arsenic Small Entity Compliance Guide—One of the Simple Tools for Effective Performance (STEP) Guide Series'' received on January 31, 2003; to the Committee on Environment and Public Works.

EC–1263. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; New Jersey, Motor Vehicle Enhanced Inspections and Maintenance Program (FRL 7441–4)'' received on February 14, 2003; to the Committee on Environment and Public Works.

EC–1264. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (FRL 7446–6)'' received on February 14, 2003; to the Committee on Environment and Public Works.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DODD (for himself, Mr. KENNEDY, and Mr. DAYTON):

S. 448. A bill to leave no child behind; to the Committee on Finance.

By Mrs. HUTCHISON:

S. 449. A bill to authorize the President to agree to certain amendments to the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank; to the Committee on Foreign Relations.

By Mr. DURBIN (for himself, Mr. FITZGERALD, and Mrs. CLINTON):

S. 450. A bill to amend the Public Health Service Act to provide for research on, and services for individuals with, postpartum depression and psychosis; to the Committee on Health, Education, Labor, and Pensions.

By Ms. SNOWE:

S. 451. A bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes; to the Committee on Armed Services.

By Mr. REID (for himself and Mr. ENSIGN):

S. 452. A bill to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War, and for other purposes; to the Committee on Energy and Natural Resources.

By Mrs. HUTCHISON (for herself, Mr. BINGAMAN, Mr. COCHRAN, and Mrs. FEINSTEIN):

S. 453. A bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants regarding patient navigators to assist individuals of health disparity populations in receiving such services; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HARKIN (for himself and Mr. GRASSLEY):

S. 454. A bill to direct the Secretary of the Army to convey the remaining water supply storage allocation in Rathbun Lake, Iowa, to the Rathbun Regional Water Association; to the Committee on Environment and Public Works.

By Mr. BREAUX:

S. 455. A bill to provide for a period of open enrollment for judicial officials under section 376 of title 28, United States Code, and for other purposes; to the Committee on the Judiciary.

By Mr. VOINOVICH:

S. 456. A bill to exclude certain wire rods from the scope of any antidumping or countervailing duty order issued as a result of certain investigations relating to carbon and certain alloy steel rods; to the Committee on Finance.

By Mr. LEAHY (for himself, Ms. SNOWE, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. CAMPBELL, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. CRAIG, Mr. CRAPO, Mr. DASCHLE, Mr. DAYTON, Mr. DODD, Mr. DOMENICI, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. GREGG, Mr. HARKIN, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. NELSON of Florida, Mr. REID, Mr. ROBERTS, Mr. ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH, Mr. SUNUNU, Mr. WARNER, Mr. WYDEN, and Ms. CANTWELL):

S. 457. A bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. BINGAMAN (for himself, Mrs. HUTCHISON, and Mrs. BOXER):

S. 458. A bill to establish the Southwest Regional Border Authority; to the Committee on Environment and Public Works.

By Mr. LEAHY (for himself, Mr. GRAHAM of South Carolina, Ms. COLLINS, Mr. JEFFORDS, Mr. SARBANES, Mr. SCHUMER, Mr. DURBIN, Ms. LANDRIEU, Mr. NELSON of Florida, Mrs. CLINTON, and Ms. SNOWE):

S. 459. A bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. MCCAIN, Mr. KYL, Mr. SCHUMER, Mrs. BOXER, Mrs. HUTCHISON, Mr. BINGAMAN, and Mr. DOMENICI):

S. 460. A bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program; to the Committee on the Judiciary.

By Mr. DORGAN (for himself, Mr. LIEBERMAN, Mrs. CLINTON, Mr. KERRY, Mr. JEFFORDS, Mr. CORZINE, Mr. CONRAD, and Mr. AKAKA):

S. 461. A bill to establish a program to promote hydrogen fuel cells, and for other purposes; to the Committee on Finance.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 462. A bill to establish procedures for the acknowledgment of Indian tribes; to the Committee on Indian Affairs.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 463. A bill to provide grants to ensure full and fair participation in certain decisionmaking processes of the Bureau of Indian Affairs; to the Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT (for himself and Mr. DODD):

S. Res. 66. A resolution authorizing expenditures by committees of the Senate for the periods March 1, 2003, through September 30, 2003, October 1, 2003, through September 30, 2004, and October 1, 2004, through February 28, 2005; submitted and read.

By Mr. SCHUMER (for himself, Mr. CORZINE, Mr. CARPER, and Ms. STABENOW):

S. Res. 67. A resolution expressing the sense of the Senate that Alan Greenspan, the Chairman of the Federal Reserve Board, should be recognized for his outstanding leadership of the Federal Reserve, his exemplary conduct as Federal Reserve chairman, and his commitment as a public servant; to the Committee on Banking, Housing, and Urban Affairs.

ADDITIONAL COSPONSORS

S. 7

At the request of Mr. DASCHLE, the name of the Senator from West Virginia (Mr. BYRD) was added as a cosponsor of S. 7, a bill to amend title XVIII of the Social Security Act to provide coverage of outpatient prescription drugs under the medicare program and to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, and for other purposes.

S. 140

At the request of Mrs. FEINSTEIN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 140, a bill to amend the Higher Education Act of 1965 to extend loan forgiveness for certain loans to Head Start teachers.

S. 251

At the request of Mr. LOTT, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Alaska (Ms. MURKOWSKI) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 272

At the request of Mr. SANTORUM, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 289

At the request of Mr. GRASSLEY, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 289, a bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes.

S. 300

At the request of Mr. KERRY, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Oregon (Mr. WYDEN) were added as cosponsors of S. 300, a bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S. 330

At the request of Mr. CAMPBELL, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Alaska (Mr. STEVENS) were added as cosponsors of S. 330, a bill to further the protection and recognition of veterans' memorials, and for other purposes.

S. 338

At the request of Mr. LAUTENBERG, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 338, a bill to protect the flying public's safety and security by requiring that the air traffic control system remain a Government function.

S. 380

At the request of Ms. COLLINS, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 380, a bill to amend chapter 83 of title 5, United States Code, to reform the funding of benefits under the Civil Service Retirement System for employees of the United States Postal Service, and for other purposes.

S. 392

At the request of Mr. REID, the name of the Senator from Alabama (Mr. SHELBY) was added as a cosponsor of S. 392, a bill to amend title 10, United States Code, to permit retired members of the Armed Forces who have a service-connected disability to receive both military retired pay by reason of their years of military service and disability compensation from the Department of Veterans Affairs for their disability.

S. 397

At the request of Mr. ENSIGN, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 397, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for the old-age, survivors, and disability insurance taxes paid by employees and self-employed individuals, and for other purposes.

S. 436

At the request of Mr. LEAHY, the names of the Senator from Wisconsin (Mr. FEINGOLD) and the Senator from North Carolina (Mr. EDWARDS) were added as cosponsors of S. 436, a bill to amend the Foreign Intelligence Surveillance Act of 1978 to improve the administration and oversight of foreign intelligence surveillance, and for other purposes.

S. CON. RES. 7

At the request of Mr. CAMPBELL, the names of the Senator from Missouri (Mr. TALENT), the Senator from Ohio (Mr. DEWINE) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of S. Con. Res. 7, A concurrent resolution expressing the sense of Congress that the sharp escalation of anti-Semitic violence within many participating States of the Organization for Security and Cooperation in Europe (OSCE) is of profound concern and efforts should be undertaken to prevent future occurrences.

S. RES. 40

At the request of Mr. BIDEN, the names of the Senator from California (Mrs. BOXER) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. Res. 40, A resolution reaffirming congressional commitment to title IX of the Education Amendments of 1972 and its critical role in guaranteeing equal educational opportunities for women and girls, particularly with respect to school athletics.

S. RES. 48

At the request of Mr. AKAKA, the names of the Senator from Missouri (Mr. TALENT) and the Senator from Idaho (Mr. CRAPO) were added as cosponsors of S. Res. 48, A resolution designating April 2003 as ''Financial Literacy for Youth Month''.

S. RES. 52

At the request of Mr. CAMPBELL, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 52, A resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of the problem.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DODD (for himself, Mr. KENNEDY, and Mr. DAYTON):

S. 448. A bill to leave no child behind, to the Committee on Finance.

Mr. DODD. Mr. President, I rise today with colleagues Senator KENNEDY and Senator DAYTON to introduce the Leave No Child Behind Act of 2003, legislation that provides a comprehensive blueprint for addressing the needs of our Nation's children.

When Representative GEORGE MILLER and I introduced the Act to Leave No Child Behind in the last Congress, in May of 2001, this Nation was looking at an unprecedented Federal budget surplus of some $5.6 trillion that Federal budget experts forecasted for the years 2002–2011.

But, just 2 years later, that projected surplus is gone. Instead, Federal budget experts now predict a deficit of more than $2 trillion for those years, the worst fiscal reversal in our history.

Where did the money go?

Obviously, the current economic slowdown has had an impact insofar as it has caused a drop in Federal receipts. However, much of the surplus was lost to an enormous tax bill that contained mostly tax breaks for the largest companies and most affluent individuals, which was enacted during the spring of 2001.

And now, to make matters worse, the President is calling for more tax breaks, again, mostly to be enjoyed by the wealthy, which Federal budget experts estimate will cost $1.5 trillion over the next decade.

At the same time, the President has proposed to severely weaken our Nation's efforts on behalf of families and children, particularly poor families with children.

I listened to the President call for a more compassionate America in his State of the Union Address. Little did I expect that he was calling for others to be compassionate so that he would not have to be.

The budget that we received from the President earlier this month is the worst I have seen for families with children in decades.

Despite the fact that millions of parents struggle with the cost of child care, that the majority of States have long waiting lists, and that we vastly need to improve the quality of care, the President proposes to freeze child care assistance in each of the next five years.

At the same time, the President proposes to increase the number of hours that parents on welfare are required to work and increase the overall number of parents on welfare who are required to work. All of this is without a dime more for child care.

Who is going to watch these children? It is an undeniable fact that additional work requirements will cause an increase in the amount of child care parents need. And, additional hours of child care cost money.

The risk is that States will rob Peter to pay Paul. They will shift child care assistance from the working poor, many of whom might be former welfare recipients, to help those on welfare meet their child care costs. This makes no sense.

For Head Start, the President proposes a modest increase, barely enough to cover inflation despite the fact that Head Start reaches only 60 percent of eligible 3- and 4-year-old children and only 3 percent of eligible infants and toddlers.

In lieu of a real expansion in the program, the President proposes giving current Head Start funds used by community programs to States. This would mean that after 38 years of success, Head Start would no longer be a national program, with national performance standards, offering comprehensive services to our Nation's poorest children—those most likely to be struggling once in school.

Head Start works. Study after study shows the gains Head Start children make. Since Head Start graduates make up only 8 percent of incoming kindergarten students, it makes no sense to raid the Head Start money to reach the other 92 percent of children who are not in Head Start. And yet, that could very well be the result of the President's proposal.

What we know in our country is that many of our young people need a safe place to go after school, particularly at-risk youth who would otherwise be likely to go home alone, where in the absence of adult supervision, they are more likely to smoke, drink, have sex, or engage in crime. And yet, the President proposes to cut the 21st Century after-school program by $400 million. That cut would cause some 570,000 children to be discharged next year from after-school programs across America.

The President proposes deep cuts in Federal housing assistance, allowing States to receive foster care as a block grant instead of individual payments based on children actually in foster care, and potentially eliminating health insurance for millions of children through a block grant of Medicaid and the State Children's Health Insurance Program.

At the same time, according to the National Governor's Association, State economies are on the whole in the worst shape since World War II. States are operating with billions of dollars in the red with State constitutional requirements to balance their budgets.

It is clear what is going on here.

Instead of providing more resources to help States during these tough times, the President is raiding poverty programs for children and using that money to help pay for tax benefits for those who are at the very top of the income scale. This reckless policy only worsens the budget shortfalls facing so many States.

Children are one-quarter of our population. But, they are 100 percent of our future. It makes no sense to shortchange our investment in children.

America's children today are living under some staggering challenges. Nearly 12 million children live in poverty; over 9 million children have no health coverage; about 7 million children go home alone each week after school; and, nearly 1 million children are abused and neglected.

We can do better for our children. We should do better for children. We don't need another tax break for America's wealthiest citizens. What we need is a sound investment in our Nation's children.

The legislation we are introducing today is called, ''An Act to Leave No Child Behind.'' We are committed to this one principle beyond all others. Not just a slogan, but as a means to define an urgent national priority.

We need to make sure that we not only talk about leaving no child behind, but that we actually take steps to do so. Introducing this bill is the first such step.

Every word on every page is focused on the same purpose—lifting our children up, giving each child an opportunity, helping each child to have a safe and rewarding life.

Under the Act to Leave No Child Behind, every child in America would have health coverage. No child in America would go to bed at night aching from hunger. We would use our tax code to lift millions of children out of poverty—not provide more hand-outs for the most wealthy in this country.

It's time to ensure that every American child has an opportunity to attend Head Start, Pre-K, or quality child care to begin a lifetime of learning. It's time to ensure that every American child can read by 4th grade, and read at grade level. And, it's time to take dramatic new steps to address the needs of children who are abused and neglected every year.

Budget experts predict that the President's tax plan will give millionaires an average tax break of $88,800 each. For that same amount of money, we could fully fund Head Start and provide health insurance to every one of the 9 million uninsured children.

We have the resources. If we can afford to give $88,800 on average to every millionaire, then the question is really about priorities and political will—not resources.

If we join together, we can transform this Nation and give each and every child his God-given right to grow and flourish to all he can be, to his or her fullest potential so that all children can realize their dreams.

I ask unanimous consent to have a summary of the bill printed in the RECORD.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

THE ACT TO LEAVE NO CHILD BEHIND

The Act to Leave No Child Behind is a comprehensive bill that will benefit every child in America. The measure represents a vision of what we can do for children if we really want to move beyond talking about leaving no child behind to taking steps to actually leave no child behind. Each of the bill's twelve titles seeks to improve the lives of children so that they can reach their fullest potential.

TITLE I: EVERY CHILD NEEDS A HEALTHY START

Over 9 million children throughout America have no health insurance today. Under the Act to Leave No Child Behind, all uninsured children would receive health care coverage.

TITLE II: PARENTING—SUPPORTING CHILDREN'S HEALTHY DEVELOPMENT

Too many parents throughout America struggle to balance work, family, and the needs of their children. Under the Act to Leave No Child Behind, the Family and Medical Leave Act would be expanded to cover more employees, create pilot demonstrations to offer paid leave, and allocate grants to states to provide parenting support and education.

TITLE III: CHILD CARE, HEAD START, & EDUCATION

Research on brain development during the first three years of life makes clear the need for quality early childhood development. Yet, only one out of every seven eligible children receives child care assistance and the quality of child care that children receive needs to be vastly improved. Head Start reaches only 60 percent of eligible 3 and 4 year olds and only 3 percent of infants and toddlers. Full funding for child care and 3 & 4 year-olds in Head Start would ensure that all children eligible for assistance can receive it.

Title IV: Tax Relief for Low-Wage Working Families; Title V: Moving Out of Poverty

Tax relief under current law is limited for low income families. The Act to Leave No Child Behind will increase the child tax credit, expand the Earned Income Tax Credit and the Dependent Tax Credit, and reduce the marriage penalty for low income families. Nearly 12 million children live in poverty in America today; about 78 percent of them live in working families. The Act to Leave No Child Behind includes supports for hard working parents to remain employed and to help lift themselves and their children out of poverty.

TITLE VI: GETTING ENOUGH TO EAT; TITLE VII: AFFORDING A PLACE TO LIVE

The Department of Agriculture estimates that nearly 13 million children live in families not getting enough to eat, including nearly 3 million children who regularly go hungry. The Act to Leave No Child Behind will expand food assistance to low income families with children. The fastest growing group among those with ''worst case housing needs'' includes families with children. The Act to Leave No Child Behind will increase the means for states to ensure that families with children have a decent, affordable place to live.

TITLE VIII: EVERY CHILD NEEDS A SAFE START

Every day, nearly 8,000 children are reported to public child protection agencies as suspected victims of child abuse. In too many states, the child protection system is stretched to its breaking point. The Act to Leave No Child Behind will help to ensure that more children are in safe, nurturing, and permanent families.

TITLE IX: SUCCESSFUL TRANSITIONS TO ADULTHOOD—YOUTH DEVELOPMENT; TITLE X: JUVENILE JUSTICE

Nearly 7 million children go home alone unsupervised each week after school. The Act to Leave No Child Behind will provide increased funding for after-school and youth development programs. While juvenile crime rates have been declining since 1994, still too many children come into contact with the law. The Act to Leave No Child Behind will provide funding for delinquency prevention programs and will enable more at-risk youth to become productive, law-abiding adults.

TITLE XI: GUN SAFETY

The most recent annual data shows that over 3,300 children and teens in America were killed by gunfire, including about one-third who committed suicide. The Act to Leave No Child Behind will close existing loopholes in our nation's gun law and promote child safety.

TITLE XII: EVERY CHILD NEEDS THE SUPPORT OF THE ENTIRE COMMUNITY

The Act to Leave No Child Behind will establish a blue-ribbon commission to identify family-friendly practices that the private sector can replicate and promote.

By Mrs. HUTCHISON:

S. 449. A bill to authorize the President to agree to certain amendments to the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank; to the Committee on Foreign Relations.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 449

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION TO CERTAIN AMENDMENTS REGARDING NORTH AMERICAN DEVELOPMENT BANK.

(a) IN GENERAL.—Part 2 of subtitle D of title V of the North American Free Trade Agreement Implementation Act (22 U.S.C. 290m et seq.) is amended by inserting after section 543 the following new section:

''SEC. 543A. AUTHORIZATION TO AMEND COOPERATION AGREEMENT.

''The President is authorized to instruct the United States representative to the Bank to vote for or otherwise agree to amendments to the Cooperation Agreement that would—

''(1) authorize the Bank, with the approval of its Board of Directors, to make grants and non-market rate loans out of its paid-in capital, if the grants are structured only as cofinancing to pay a portion of the recipient's debt service on debt financing for the project for which the grant is made; and

''(2) amend the definition of 'border region' to include the area in the United States that is within 100 kilometers of the international boundary between the United States and Mexico, and the area in Mexico that is within 300 kilometers of the international boundary between the United States and Mexico.''.

(b) CONFORMING AMENDMENT.—The table of contents for the North American Free Trade Agreement Implementation Act is amended by inserting after the item relating to section 543, the following new item:

''Sec. 543A. Authorization to amend Cooperation Agreement.''.

By Mr. DURBIN (for himself, Mr. FITZGERALD, and Mrs. CLINTON):

S. 450. A bill to amend the Public Health Service Act to provide for research on, and services for individuals

with, postpartum depression and psychosis; to the Committee on Health, Education, Labor, and Pensions.

Mr. DURBIN. Mr. President, I rise today to introduce the Melanie Stokes Postpartum Depression Research and Care Act along with Senator FITZGERALD and Senator CLINTON.

My legislation is named after a Chicago native who struggled unsuccessfully against postpartum psychosis following the birth of her daughter. While fighting this debilitating mental condition Ms. Stokes has been in and out of hospitals several times, stopped eating and drinking, and wouldn't swallow pills. Despite medical assistance and the support of her family and friends, Mrs. Stokes was ultimately unable to overcome her condition, and jumped to her death from a 12-story window ledge.

Studies indicate that 50 to 75 percent of all new mothers experience the ''baby blues,'' a feeling of moderate emotional distress following childbirth. Serious postpartum depression on the other hand, affects between 10 and 20 percent of women. In Illinois alone there are at least 180,000 births a year. Even using the conservative estimate that 10 percent of mothers will suffer from postpartum depression, this suggests that over 18,000 women, in the State of Illinois alone will experience the devastating symptoms of this disorder each year. Women suffering from serious postpartum depression may worry excessively or find themselves exhausted. They may experience sadness, feelings of guilt, apathy, phobias, or sleep problems sometimes for as long as 3 to 14 months. Understanding this disorder more fully and developing new treatments should be a top priority.

The most severe form of mental illness that can affect women following childbirth is postpartum psychosis. Although this condition is more difficult to recognize since it occurs less frequently than postpartum depression, the consequences of allowing postpartum psychosis to go untreated are serious. Postpartum psychosis is characterized by hallucinations, hearing voices, paranoia, severe insomnia, extreme anxiety and depression and women suffering from the disorder are at increased risk for suicide or harming others.

Even though many new mothers will experience some form of postpartum depression or the ''baby blues,'' few research studies are carefully examining the causes of this mental condition at present. In addition, there is currently no standard treatment for women suffering from postpartum depression. The Melanie Stokes Postpartum Depression Research and Care Act would develop a coordinated approach for understanding and treating this devastating illness.

Specifically, my legislation authorizes the Secretary of Health and Human Services to organize a series of national meetings that focus on developing a consensus research and treatment plan for postpartum depression and psychosis. The Melanie Stokes Postpartum Depression Research and Care Act also encourages the Secretary to implement the consensus research and treatment plan generated via the national meting series in a timely fashion. Finally, the bill makes grant funding available through the Substance Abuse and Mental Health Services Administration to aid in the delivery of treatment services for postpartum depression to women and their families.

I am pleased that Senator FITZGERALD and Senator CLINTON have joined me in introducing this important legislation. Congressman RUSH has taken the lead in the House of Representatives. I am anxious to work in a bipartisan, bicameral fashion to coordinate our approach toward understanding postpartum depression by passing this legislation in remembrance of Melanie Stokes and all the women who have suffered from postpartum depression and psychosis.

By Ms. SNOWE:

S. 451. A bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes; to the Committee on Armed Services.

Ms. SNOWE. Mr. President, I rise today to introduce legislation that will correct an injustice being visited upon the survivors of our servicemembers killed in action and military retirees under the current military Survivor's Benefit Plan, or SBP.

As the program currently operates, the widows or widowers of those who have ''borne the battle'' receive an annuity equal to 55 percent of the servicemember's retirement pay. That is, until they turn 62. At that time, under current law, a surviving spouse's SBP benefits must be reduced either by a Social Security offset, or a reduction in payments to 35 percent of retired pay—a drop of almost 40 percent—simply because they have reached the age of 62.

For example, let's take the widow of a Navy chief petty officer or E–7 who had served 20 years before retiring. Before she reaches 62, this widow will receive $771 per month, but on her 62nd birthday, that benefit drops to only $491 per month—a loss of $3,360 per year.

For a retired O–5, say a Marine Corps lieutenant colonel, the widow's benefit would drop by $6,960 a year as soon as she turns 62. Some birthday gift.

But the inequities don't stop there. For example, the military Survivor Benefit Plan does not measure up to the Federal Survivor Benefit Plan in terms of benefits paid to survivors. Survivors of Federal civilian retirees under the original Civil Service Retirement System receive 55 percent of their spouse's retired pay for life—with no drop in benefits at age 62. Under the newer Federal Employee Retirement System, survivors still receive 50 percent of retired pay for life, again with no drop at age 62.

Yet another reason that we should adopt this legislation is that members of the military pay more than their share of Survivor Benefit Plan program costs, as compared to their Federal civilian counterparts.

Originally, the Congress intended the government to subsidize 40 percent of the cost of military Survivor Benefit Plan premiums—similar to the government's contribution to the Federal civilian plan. Over the last several decades, however, there has been a significant decline in the government's cost share, and Department of Defense actuaries advise that the government subsidy is now down to less than 17 percent. This means that military retirees are now paying more than 83 percent of program costs from their retired pay versus the intended 60 percent.

Contrast this to the Federal civilian SBP, which has a 52 percent cost share for those under the Civil Service Retirement System and a 67 percent cost share for those employees, including many of our own staff, under the Federal Employees Retirement System. While it is true that there are differences between the civilian and military premium costs, with Federal civilians paying more, it is also true that military retirees generally retire earlier than their Federal civilian counterparts, and as a result, pay premiums for many more years.

This legislation is intended to raise, over a five year period, the percentage of the retirement annuity received by the survivor from 35 percent to 55 percent after age 62. The first year, 2004, will be an open season to allow new enrollees to sign up for the program in order to reduce retired pay outlays by increasing deductions of SBP premiums from retired pay, thus offsetting part of the cost of the survivor benefit increase.

Beginning on Oct. 1, 2004, the second year, the age-62 SBP annuity would increase to 40 percent of retired pay, followed by an additional increase to 45 percent in 2005, 50 percent in 2006 and 55 percent in 2007 after which all survivors would receive the 55 percent of the annuity.

Once again, I ask my colleagues to support our Nation's military widows and widowers. In the National Defense Authorization Act of 2001, we included a Sense of the Congress on increasing the military SBP annuity. This year, we have a chance to carry out this intent by enacting this important measure, and I ask my colleagues to join with me in support of this legislation.

By Mr. REID (for himself and Mr. ENSIGN):

S. 452. A bill to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War,

and for other purposes; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, the Cold War was the longest war in United States history. Lasting 50 years, the Cold War cost thousands of lives, trillions of dollars, changed the course of history, and left America the only superpower in the world. Because of the nuclear capabilities of our enemy it was the most dangerous conflict our country ever faced. The threat of mass destruction left a permanent mark on American life and politics. Those that won this war did so in obscurity. Those that gave their lives in the Cold War have never been properly honored.

Today I introduce with Senator ENSIGN a bill that requires the Department of the Interior to conduct a study to identify sites and resources to commemorate heroes of the Cold War and to interpret the Cold War for future generations.

Our legislation directs the Secretary of the Interior to establish a ''Cold War Advisory Committee'' to oversee the inventory of Cold War sites and resources for potential inclusion in the National Park System, as national historic landmarks, or other appropriate designations.

The Advisory Committee will work closely with State and local governments and local historical organizations. The committee's starting point will be a Cold War study completed by the Secretary of Defense under the 1991 Defense Appropriations Act Obvious Cold War sites of significance include: Intercontinental Ballistic Missiles, flight training centers, communications and command centers, such as Cheyenne Mountain, Colorado, nuclear weapons test sites, such as the Nevada test site, and strategic and tactical resources.

Perhaps no other state in the Union has played a more significant role than Nevada in winning the Cold War. The Nevada Test Site is a high-technology engineering marvel where the United States developed, tested, and perfected a nuclear deterrent which is the cornerstone of America's security and leadership among nations. The Naval Air Station at Fallon is the Navy's premiere tactical air warfare training facility. The Air Warfare Center at Nellis Air Force Base has the largest training range in the United States to ensure that America's pilots will prevail in any armed conflict.

The Advisory Committee established under this legislation will develop an interpretive handbook on the Cold War to tell the story of the Cold War and its heroes.

I would like to take a moment to relate a story of one group of Cold War heroes. On a snowy evening in November 17, 1955, a United States Air Force C–54 crashed near the summit of Mount Charleston in central Nevada. The doomed flight was carrying 15 scientific and technical personnel to secret Area 51 where the U–2 reconnaissance plane, of Francis Powers fame, was being developed under tight security. The men aboard the ill-fated C–54 helped build the plane which critics said could never be built. The critics were wrong—the U–2 is a vital part of our reconnaissance force to this day.

The secrecy of the mission was so great that the families of the men who perished on Mount Charleston only recently learned about the true circumstances of the crash that took the lives of their loved ones. My legislation will provide $300,000 to identify historic landmarks like the crash at Mount Charleston.

I'd like to thank Mr. Steve Ririe of Las Vegas who brought to light the events surrounding the death of the fourteen men who perished on Mount Charleston nearly a half century ago, and for the efforts of State Senator Rawson who shepherded a resolution through the Nevada legislature to commemorate these heroes.

A grateful Nation owes its gratitude to the ''Silent Heroes of the Cold War.'' We urge our colleagues to support this long overdue tribute to the contribution and sacrifice of those Cold War heroes for the cause of freedom.

By Mrs. HUTCHISON (for herself, Mr. BINGAMAN, Mr. COCHRAN, and Mrs. FEINSTEIN):

S. 453. A bill to authorize the Health Resources and Services Administration and the National Cancer Institute to make grants for model programs to provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases, and to make grants regarding patient navigators to assist individuals of health disparity populations in receiving such services; to the Committee on Health, Education, Labor, and Pensions.

Mrs. HUTCHISON. Mr. President, I am pleased to introduce legislation today that will reduce barriers to health care for millions of patients across the country, particularly those from medically underserved and minority communities. The Patient Navigator, Outreach, and Chronic Disease Prevention Act will create programs which direct individuals to affordable and accessible prevention, detection and treatment services for cancer and other chronic diseases. The bill will also establish patient navigator programs to assist patients make their way through the often complex health care system.

This year alone, more than 80,000 Texans will be diagnosed with cancer and nearly 35,000 Texans will die of the disease. Cancer is the most expensive illness in the United States. It cost Texas $13.9 billion in one year due to medical costs and loss of productivity in 1998.

Despite the tremendous progress that has been made in cancer and chronic disease prevention, detection, and treatment, not all Americans are benefitting. Cancer survival rates of those living in poverty are ten to fifteen percent lower than other Americans, and African American men have the lowest rate of cancer survival. Cancer and chronic disease continue to disproportionately impact minorities and medically underserved communities. The consequences of inadequate access to these services mean that diseases like cancer are often diagnosed at later stages when the illness is more advanced and options for treatment are decreased.

In my home State of Texas, ensuring access to health care is a profound challenge, particularly along the Texas-Mexico border. The problem is in part due to lack of insurance coverage, as forty-nine percent of the Texas Hispanic population does not have health insurance, but it is also attributable to an uneven distribution of health professionals and hospitals, inadequate transportation, and a shortage of bilingual health information and providers.

The legislation I am introducing today will eliminate barriers by cutting through red tape and increasing access to affordable prevention and care for people from all walks of life.

The bill accomplishes its goals by reaching patients in the communities in which they live—through community health centers, rural health clinics, community hospitals, cancer centers, tribal and urban Indian organizations, among others, and by ensuring that there is a doctor or nurse, who, while speaking in a language people can understand, will provide patients with prevention screenings and follow-up treatment.

Patients will be provided with a trained patient navigator from their own community, who can help with scheduling and keeping appointments and referrals for prevention and treatment. They can also ensure doctor's instructions are followed and funds to pay for treatment or arranging transportation to a specialist are obtained. They may also provide a service as simple as helping out with the paperwork.

This legislation is modeled after successful programs such as the Harlem Navigator Program at Harlem Hospital in New York City operated by Dr. Harold Freeman, and the local Washington, D.C. Hospital Cancer Preventorium directed by Dr. Elmer Huerta. Through implementation of the Harlem patient navigator program, diagnosis of breast cancer at an early stage has improved. In 1989, only 1 out of 20 breast cancer diagnoses were made at an early stage. Now, through the navigator program, 4 out of every 10 diagnoses are identified early. Furthermore, the program has reduced the time between diagnosis and treatment to ten days.

I look forward to working with my colleagues to pass the critically important Patient Navigator, Outreach and Chronic Disease Prevention Act.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 453

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Patient Navigator, Outreach, and Chronic Disease Prevention Act of 2003''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Despite notable progress in the overall health of the Nation, there are continuing disparities in the burden of illness and death experienced by African Americans, Latinos and Hispanics, Native Americans, Alaska Natives, Asian and Pacific Islanders and the poor, compared to the United States population as a whole.

(2) Many racial and ethnic minority groups suffer disproportionately from cancer. Mortality and morbidity rates remain the most important measures of the overall progress against cancer. Decreasing rates of death from cancer reflect improvements in both prevention and treatment. Among all ethnic groups in the United States, African American males have the highest overall rate of mortality from cancer. Some specific forms of cancer affect other ethnic minority communities at rates up to several times higher than the national averages (such as stomach and liver cancers among Asian American populations, colon and rectal cancer among Alaska natives, and cervical cancer among Hispanic and Vietnamese-American women).

(3) Regions characterized by high rates of poverty also have high mortality for some forms of cancer. For example, in Appalachian Kentucky the incidence of lung cancer among white males was 127 per 100,000 in 1992, a rate higher than that for any ethnic minority group in the United States during the same period.

(4) Major disparities for other chronic diseases exist among population groups, with a disproportionate burden of death and disability from cardiovascular disease in racial and ethnic minority and low-income populations. Compared with rates for the general population, coronary heart disease mortality was 40 percent lower for Asian Americans but 40 percent higher for African-Americans.

(5) Minority populations are disproportionately impacted by diabetes and other chronic diseases. Hispanics are twice as likely to have diabetes as non-Hispanic whites; diabetes is the fourth leading cause of death among Hispanic women and elderly. African Americans are 1.7 times as likely to have diabetes as the general population. More than 15% of the combined populations of Native Americans and Alaska Natives have diabetes.

(6) Culturally competent approaches to chronic disease care are needed to encourage increased participation of racial and ethnic minorities and the medically underserved in chronic disease prevention, early detection and treatment programs.

SEC. 3. HRSA GRANTS FOR MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION; HRSA GRANTS FOR PATIENT NAVIGATORS.

Subpart I of part D of title III of the Public Health Service Act (42 U.S.C. 254b et seq.) is amended by adding at the end the following:

''SEC. 330L. MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION; PATIENT NAVIGATORS.

''(a) MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION.—

''(1) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to public and nonprofit private health centers (including health centers under section 330, Indian Health Service Centers, tribal governments, urban Indian organizations, clinics serving Asian Americans and Pacific Islanders and Alaskan Natives, rural health clinics, and qualified nonprofit entities that enter into partnerships with public and nonprofit private health centers to provide navigation services, which demonstrate the ability to perform all the functions described in this subsection and subsections (b), and (c)) for the development and operation of model programs that—

''(A) provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases;

''(B) ensure that the health services are provided to such individuals in a culturally competent manner;

''(C) assign patient navigators, in accordance with applicable criteria of the Secretary, for managing the care of individuals of health disparity populations to—

''(i) accomplish, to the extent possible, the follow-up and diagnosis of an abnormal finding and the treatment and appropriate follow-up care of cancer or other chronic disease; and

''(ii) facilitate access to appropriate health care services within the health care system to ensure optimal patient utilization of such services, including aid in coordinating and scheduling appointments and referrals, community outreach, assistance with transportation arrangements, and assistance with insurance issuers and other barriers to care;

''(D) require training for patient navigators employed through model programs under this paragraph to ensure the ability of such navigators to perform all of the duties required under this subsection and in subsection (b), including training to ensure that such navigators are informed about health insurance systems and are able to aid patients in resolving access issues; and

''(E) ensure that consumers have direct access to patient navigators during regularly scheduled hours of business operation.

''(2) OUTREACH SERVICES.—A condition for the receipt of a grant under paragraph (1) is that the applicant involved agree to provide ongoing outreach activities while receiving the grant, in a manner that is culturally competent for the health disparity population served by the program, to inform the public, and the specific community that the program is serving, of the services of the model program under the grant. Such activities shall include facilitating access to appropriate health care services and patient navigators within the health care system to ensure optimal patient utilization of these services.

''(3) DATA COLLECTION AND REPORT.—

''(A) IN GENERAL.—To provide for effective program evaluation, a grant recipient under this subsection shall collect specific patient data with respect to services provided to each patient served through the program and shall establish and implement procedures and protocols, consistent with applicable Federal and State laws (including sections 160 and 164 of title 45, Code of Federal Regulations) to ensure the confidentiality of all information shared by a patient in the program (or their personal representative) and their health care providers, group health plans, or health insurance insurers.

''(B) USE OF DATA.—A grant recipient under this subsection may, consistent with applicable Federal and State confidentiality laws, collect, use, or disclose aggregate information that is not individually identifiable (as such term is defined for purposes of sections 160 and 164 of title 45 Code of Federal Regulations).

''(C) REPORT.—Using date collected under this paragraph, a grantee shall prepare and submit to the Secretary an annual report that summarizes and analyzes such data and provides information on the need for navigation services, the types of access difficulties resolved, the sources of repeated resolutions, and the flaws in the system of access, including insurance barriers.

''(4) APPLICATION FOR GRANT.—A grant may be made under paragraph (1) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

''(5) EVALUATIONS.—

''(A) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, directly or through grants or contracts, provide for evaluations to determine which outreach activities under paragraph (2) were most effective in informing the public, and the specific community that the program is serving, of the model program services and to determine the extent to which such programs were effective in providing culturally competent services to the health disparity population served by the programs.

''(B) DISSEMINATION OF FINDINGS.—The Secretary shall as appropriate disseminate to public and private entities the findings made in evaluations under subparagraph (A).

''(6) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordinate the program under this subsection with the program under subsection (b), with the program under section 417D, and to the extent practicable, with programs for prevention centers that are carried out by the Director of the Centers for Disease Control and Prevention.

''(b) PROGRAM FOR PATIENT NAVIGATORS.—

''(1) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to public and nonprofit private health centers (including health centers under section 330, Indian Health Service Centers, tribal governments, urban Indian organizations, clinics serving Asian Americans and Pacific Islanders and Alaskan Natives, rural health clinics, and qualified nonprofit entities that enter into partnerships with public and nonprofit private health centers to provide navigation services, which demonstrate the ability to perform all the functions described in subsections (a), (b), and (c)) for the development and operation of programs to pay the costs of such health centers in—

''(A) assigning patient navigators, in accordance with applicable criteria of the Secretary, for managing the care of individuals of health disparity populations for the duration of receiving health services from the health centers, including aid in coordinating and scheduling appointments and referrals, community outreach, assistance with transportation arrangements, and assistance with insurance issuers and other barriers to care;

''(B) ensuring that the services provided by the patient navigators to such individuals include case management and psychosocial assessment and care or information and referral to such services;

''(C) ensuring that the patient navigators with direct knowledge of the communities they serve provide services to such individuals in a culturally competent manner;

''(D) developing model practices for patient navigators, including with respect to—

''(i) coordination of health services, including psychosocial assessment and care;

''(ii) appropriate follow-up care, including psychosocial assessment and care;

''(iii) determining coverage under health insurance and health plans for all services;

''(iv) ensuring the initiation, continuation, or sustained access to care prescribed by the patients' health care providers; and

''(v) aiding patients with health insurance coverage issues;

''(E) requiring training for patient navigators to ensure the ability of such navigators to perform all of the duties required under this subsection and in subsection (a), including training to ensure that such navigators are informed about health insurance systems and are able to aid patients in resolving access issues; and

''(F) ensuring that consumers have direct access to patient navigators during regularly scheduled hours of business operation.

''(2) OUTREACH SERVICES.—A condition for the receipt of a grant under paragraph (1) is that the applicant involved agree to provide ongoing outreach activities while receiving the grant, in a manner that is culturally competent for the health disparity population served by the program, to inform the public, and the specific community that the patient navigator is serving, of the services of the model program under the grant.

''(3) DATA COLLECTION AND REPORT.—

''(A) IN GENERAL.—To provide for effective patient navigator program evaluation, a grant recipient under this subsection shall collect specific patient data with respect to navigation services provided to each patient served through the program and shall establish and implement procedures and protocols, consistent with applicable Federal and State laws (including sections 160 and 164 of title 45, Code of Federal Regulations) to ensure the confidentiality of all information shared by a patient in the program (or their personal representative) and their health care providers, group health plans, or health insurance insurers.

''(B) USE OF DATA.—A grant recipient under this subsection may, consistent with applicable Federal and State confidentiality laws, collect, use, or disclose aggregate information that is not individually identifiable (as such term is defined for purposes of sections 160 and 164 of title 45 Code of Federal Regulations).

''(C) REPORT.—Using date collected under this paragraph, a grantee shall prepare and submit to the Secretary an annual report that summarizes and analyzes such data and provides information on the need for navigation services, the types of access difficulties resolved, the sources of repeated resolutions, and the flaws in the system of access, including insurance barriers.

''(4) APPLICATION FOR GRANT.—A grant may be made under paragraph (1) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

''(5) EVALUATIONS.—

''(A) IN GENERAL.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, directly or through grants or contracts, provide for evaluations to determine the effects of the services of patient navigators on the individuals of health disparity populations for whom the services were provided, taking into account the matters referred to in paragraph (1)(C).

''(B) DISSEMINATION OF FINDINGS.—The Secretary shall as appropriate disseminate to public and private entities the findings made in evaluations under subparagraph (A).

''(6) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordinate the program under this subsection with the program under subsection (a) and with the program under section 417D.

''(c) REQUIREMENTS REGARDING FEES.—

''(1) IN GENERAL.—A condition for the receipt of a grant under subsection (a)(1) or (b)(1) is that the program for which the grant is made have in effect—

''(A) a schedule of fees or payments for the provision of its health care services related to the prevention and treatment of disease that is consistent with locally prevailing rates or charges and is designed to cover its reasonable costs of operation; and

''(B) a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the ability of the patient to pay.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require payment for navigation services or to require payment for health care services in cases where the care is provided free of charge, including the case of services provided through programs of the Indian Health Service.

''(d) MODEL.—Not later than three years after the date of the enactment of this section, the Secretary shall develop a peer-reviewed model of systems for the services provided by this section. The Secretary shall update such model as may be necessary to ensure that the best practices are being utilized.

''(e) DURATION OF GRANT.—The period during which payments are made to an entity from a grant under subsection (a)(1) or (b)(1) may not exceed five years. The provision of such payments are subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed as establishing a limitation on the number of grants under such subsection that may be made to an entity.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'culturally competent', with respect to providing health-related services, means services that, in accordance with standards and measures of the Secretary, are designed to effectively and efficiently respond to the cultural and linguistic needs of patients.

''(2) The term 'appropriate follow-up care' includes palliative and end-of-life care.

''(3) The term 'health disparity population' means a population where there exists a significant disparity in the overall rate of disease incidence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. Such term includes—

''(A) racial and ethnic minority groups as defined in section 1707; and

''(B) medically underserved groups, such as rural and low-income individuals and individuals with low levels of literacy.

''(4)(A) The term 'patient navigator' means an individual whose functions include—

''(i) assisting and guiding patients with a symptom or an abnormal finding or diagnosis of cancer or other chronic disease within the health care system to accomplish the follow-up and diagnosis of an abnormal finding as well as the treatment and appropriate follow-up care of cancer or other chronic disease; and

''(ii) identifying, anticipating, and helping patients overcome barriers within the health care system to ensure prompt diagnostic and treatment resolution of an abnormal finding of cancer or other chronic disease.

''(B) Such term includes representatives of the target health disparity population, such as nurses, social workers, cancer survivors, and patient advocates.

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—

''(A) MODEL PROGRAMS.—For the purpose of carrying out subsection (a) (other than the purpose described in paragraph (2)(A)), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(B) PATIENT NAVIGATORS.—For the purpose of carrying out subsection (b) (other than the purpose described in paragraph (2)(B)), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(C) BUREAU OF PRIMARY HEALTH CARE.—Amounts appropriated under subparagraph (A) or (B) shall be administered through the Bureau of Primary Health Care.

''(2) PROGRAMS IN RURAL AREAS.—

''(A) MODEL PROGRAMS.—For the purpose of carrying out subsection (a) by making grants under such subsection for model programs in rural areas, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(B) PATIENT NAVIGATORS.—For the purpose of carrying out subsection (b) by making grants under such subsection for programs in rural areas, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(C) OFFICE OF RURAL HEALTH POLICY.—Amounts appropriated under subparagraph (A) or (B) shall be administered through the Office of Rural Health Policy.

''(3) RELATION TO OTHER AUTHORIZATIONS.—Authorizations of appropriations under paragraphs (1) and (2) are in addition to other authorizations of appropriations that are available for the purposes described in such paragraphs.''.

SEC. 4. NCI GRANTS FOR MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION; NCI GRANTS FOR PATIENT NAVIGATORS.

Subpart 1 of part C of title IV of the Public Health Service Act (42 U.S.C. 285 et seq.) is amended by adding at the end following:

''SEC. 417E. MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION; PATIENT NAVIGATORS.

''(a) MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION.—

''(1) IN GENERAL.—The Director of the Institute may make grants to eligible entities for the development and operation of model programs that—

''(A) provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases;

''(B) ensure that the health services are provided to such individuals in a culturally competent manner;

''(C) assign patient navigators, in accordance with applicable criteria of the Secretary, for managing the care of individuals of health disparity populations to—

''(i) accomplish, to the extent possible, the follow-up and diagnosis of an abnormal finding and the treatment and appropriate follow-up care of cancer or other chronic disease; and

''(ii) facilitate access to appropriate health care services within the health care system to ensure optimal patient utilization of such services, including aid in coordinating and scheduling appointments and referrals, community outreach, assistance with transportation arrangements, and assistance with insurance issuers and other barriers to care;

''(D) require training for patient navigators employed through model programs under this paragraph to ensure the ability of such navigators to perform all of the duties required under this subsection and in subsection (b), including training to ensure that

such navigators are informed about health insurance systems and are able to aid patients in resolving access issues; and

''(E) ensure that consumers have direct access to patient navigators during regularly scheduled hours of business operation.

''(2) ELIGIBLE ENTITIES.—For purposes of this section, an eligible entity is a designated cancer center of the Institute, an academic institution, an Indian Health Services Clinic, a tribal government, an urban Indian organization, a hospital, a qualified nonprofit entity that enters into a partnership with public and nonprofit private health centers to provide navigation services and which demonstrates the ability to perform all the functions described in subsections (a), (b), and (c), or any other public or private entity determined to be appropriate by the Director of the Institute that provides services described in paragraph (1)(A) for cancer and chronic diseases, a nonprofit organization, or any other public or private entity determined to be appropriate by the Director of the Institute, that provides services described in paragraph (1)(A) for cancer or chronic diseases.

''(3) DATA COLLECTION AND REPORT.—

''(A) IN GENERAL.—To provide for effective program evaluation, a grant recipient under this subsection shall collect specific patient data with respect to services provided to each patient served through the program and shall establish and implement procedures and protocols, consistent with applicable Federal and State laws (including sections 160 and 164 of title 45, Code of Federal Regulations) to ensure the confidentiality of all information shared by a patient in the program (or their personal representative) and their health care providers, group health plans, or health insurance insurers.

''(B) USE OF DATA.—A grant recipient under this subsection may, consistent with applicable Federal and State confidentiality laws, collect, use, or disclose aggregate information that is not individually identifiable (as such term is defined for purposes of sections 160 and 164 of title 45 Code of Federal Regulations).

''(C) REPORT.—Using date collected under this paragraph, a grantee shall prepare and submit to the Secretary an annual report that summarizes and analyzes such data and provides information on the need for navigation services, the types of access difficulties resolved, the sources of repeated resolutions, and the flaws in the system of access, including insurance barriers.

''(4) OUTREACH SERVICES.—A condition for the receipt of a grant under paragraph (1) is that the applicant involved agree to provide ongoing outreach activities while receiving the grant, in a manner that is culturally competent for the health disparity population served by the program, to inform the public, and the specific community that the program is serving, of the services of the model program under the grant. Such activities shall include facilitating access to appropriate health care services and patient navigators within the health care system to ensure optimal patient utilization of these services.

''(5) APPLICATION FOR GRANT.—A grant may be made under paragraph (1) only if an application for the grant is submitted to the Director of the Institute and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

''(6) EVALUATIONS.—

''(A) IN GENERAL.—The Director of the Institute, directly or through grants or contracts, shall provide for evaluations to determine which outreach activities under paragraph (3) were most effective in informing the public, and the specific community that the program is serving, of the model program services and to determine the extent to which such programs were effective in providing culturally competent services to the health disparity population served by the programs.

''(B) DISSEMINATION OF FINDINGS.—The Director of the Institute shall as appropriate disseminate to public and private entities the findings made in evaluations under subparagraph (A).

''(7) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordinate the program under this subsection with the program under subsection (b), with the program under section 330I, and to the extent practicable, with programs for prevention centers that are carried out by the Director of the Centers for Disease Control and Prevention.

''(b) PROGRAM FOR PATIENT NAVIGATORS.—

''(1) IN GENERAL.—The Director of the Institute may make grants to eligible entities for the development and operation of programs to pay the costs of such entities in—

''(A) assigning patient navigators, in accordance with applicable criteria of the Secretary, for managing the care of individuals of health disparity populations for the duration of receiving health services from the health centers, including aid in coordinating and scheduling appointments and referrals, community outreach, assistance with transportation arrangements, and assistance with insurance issuers and other barriers to care;

''(B) ensuring that the services provided by the patient navigators to such individuals include case management and psychosocial assessment and care or information and referral to such services;

''(C) ensuring that patient navigators with direct knowledge of the communities they serve provide services to such individuals in a culturally competent manner;

''(D) developing model practices for patient navigators, including with respect to—

''(i) coordination of health services, including psychosocial assessment and care;

''(ii) follow-up services, including psychosocial assessment and care; and

''(iii) determining coverage under health insurance and health plans for all services;

''(iv) ensuring the initiation, continuation, or sustained access to care prescribed by the patients' health care providers; and

''(v) aiding patients with health insurance coverage issues;

''(E) requiring training for patient navigators to ensure the ability of such navigators to perform all of the duties required under this subsection and in subsection (a), including training to ensure that such navigators are informed about health insurance systems and are able to aid patients in resolving access issues; and

''(F) ensuring that consumers have direct access to patient navigators during regularly scheduled hours of business operation.

''(2) OUTREACH SERVICES.—A condition for the receipt of a grant under paragraph (1) is that the applicant involved agree to provide ongoing outreach activities while receiving the grant, in a manner that is culturally competent for the health disparity population served by the program, to inform the public, and the specific community that the patient navigator is serving, of the services of the model program under the grant.

''(3) DATA COLLECTION AND REPORT.—

''(A) IN GENERAL.—To provide for effective patient navigator program evaluation, a grant recipient under this subsection shall collect specific patient data with respect to navigation services provided to each patient served through the program and shall establish and implement procedures and protocols, consistent with applicable Federal and State laws (including sections 160 and 164 of title 45, Code of Federal Regulations) to ensure the confidentiality of all information shared by a patient in the program (or their personal representative) and their health care providers, group health plans, or health insurance insurers.

''(B) USE OF DATA.—A grant recipient under this subsection may, consistent with applicable Federal and State confidentiality laws, collect, use, or disclose aggregate information that is not individually identifiable (as such term is defined for purposes of sections 160 and 164 of title 45 Code of Federal Regulations).

''(C) REPORT.—Using date collected under this paragraph, a grantee shall prepare and submit to the Secretary an annual report that summarizes and analyzes such data and provides information on the need for navigation services, the types of access difficulties resolved, the sources of repeated resolutions, and the flaws in the system of access, including insurance barriers.

''(4) APPLICATION FOR GRANT.—A grant may be made under paragraph (1) only if an application for the grant is submitted to the Director of the Institute and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

''(5) EVALUATIONS.—

''(A) IN GENERAL.—The Director of the Institute, directly or through grants or contracts, shall provide for evaluations to determine the effects of the services of patient navigators on the health disparity population for whom the services were provided, taking into account the matters referred to in paragraph (1)(C).

''(B) DISSEMINATION OF FINDINGS.—The Director of the Institute shall as appropriate disseminate to public and private entities the findings made in evaluations under subparagraph (A).

''(6) COORDINATION WITH OTHER PROGRAMS.—The Secretary shall coordinate the program under this subsection with the program under subsection (a) and with the program under section 330I.

''(c) REQUIREMENTS REGARDING FEES.—

''(1) IN GENERAL.—A condition for the receipt of a grant under subsection (a)(1) or (b)(1) is that the program for which the grant is made have in effect—

''(A) a schedule of fees or payments for the provision of its health care services related to the prevention and treatment of disease that is consistent with locally prevailing rates or charges and is designed to cover its reasonable costs of operation; and

''(B) a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the ability of the patient to pay.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require payment for navigation services or to require payment for health care services in cases where the care is provided free of charge, including the case of services provided through programs of the Indian Health Service.

''(d) MODEL.—Not later than three years after the date of the enactment of this section, the Director of the Institute shall develop a peer-reviewed model of systems for the services provided by this section. The Director shall update such model as may be necessary to ensure that the best practices are being utilized.

''(e) DURATION OF GRANT.—The period during which payments are made to an entity from a grant under subsection (a)(1) or (b)(1) may not exceed five years. The provision of such payments are subject to annual approval by the Director of the Institute of the payments and subject to the availability of

appropriations for the fiscal year involved to make the payments. This subsection may not be construed as establishing a limitation on the number of grants under such subsection that may be made to an entity.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'culturally competent', with respect to providing health-related services, means services that, in accordance with standards and measures of the Secretary, are designed to effectively and efficiently respond to the cultural and linguistic needs of patients.

''(2) the term 'appropriate follow-up care' includes palliative and end-of-life care.

''(3) the term 'health disparity population' means a population where there exists a significant disparity in the overall rate of disease incidence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. Such term includes—

''(A) racial and ethnic minority groups as defined in section 1707; and

''(B) medically underserved groups, such as rural and low-income individuals and individuals with low levels of literacy.

''(4)(A) the term 'patient navigator' means an individual whose functions include—

''(i) assisting and guiding patients with a symptom or an abnormal finding or diagnosis of cancer or other chronic disease within the health care system to accomplish the follow-up and diagnosis of an abnormal finding as well as the treatment and appropriate follow-up care of cancer or other chronic disease, including information about clinical trials; and

''(ii) identifying, anticipating, and helping patients overcome barriers within the health care system to ensure prompt diagnostic and treatment resolution of an abnormal finding of cancer or other chronic disease.

''(B) Such term includes representatives of the target health disparity population, such as nurses, social workers, cancer survivors, and patient advocates.

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) MODEL PROGRAMS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(2) PATIENT NAVIGATORS.—For the purpose of carrying out subsection (b), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(3) RELATION TO OTHER AUTHORIZATIONS.—Authorizations of appropriations under paragraphs (1) and (2) are in addition to other authorizations of appropriations that are available for the purposes described in such paragraphs.''.

SEC. 5. IHS GRANTS FOR MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION; IHS GRANTS FOR PATIENT NAVIGATORS.

Title II of the Indian Health Care Improvement Act (25 U.S.C. 162 et seq.) is amended by adding at the end the following:

''SEC. 226. MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION; PATIENT NAVIGATORS.

''(a) MODEL COMMUNITY CANCER AND CHRONIC DISEASE CARE AND PREVENTION.—

''(1) IN GENERAL.—The Director of the Service may make grants to Indian Health Service Centers, tribal governments, urban Indian organizations, tribal organizations, and qualified nonprofit entities that enter into partnerships with public and nonprofit private health centers serving Native American populations to provide navigation services and that demonstrate the ability to perform all the functions described in this subsection and subsections (b) and (c), for the development and operation of model programs that—

''(A) provide to individuals of health disparity populations prevention, early detection, treatment, and appropriate follow-up care services for cancer and chronic diseases;

''(B) ensure that the health services are provided to such individuals in a culturally competent manner;

''(C) assign patient navigators, in accordance with applicable criteria of the Secretary, for managing the care of individuals of health disparity populations to—

''(i) accomplish, to the extent possible, the follow-up and diagnosis of an abnormal finding and the treatment and appropriate follow-up care of cancer or other chronic disease; and

''(ii) facilitate access to appropriate health care services within the health care system to ensure optimal patient utilization of such services, including aid in coordinating and scheduling appointments and referrals, community outreach, assistance with transportation arrangements, and assistance with insurance issuers and other barriers to care;

''(D) require training for patient navigators employed through model programs under this paragraph to ensure the ability of such navigators to perform all of the duties required under this subsection and in subsection (b), including training to ensure that such navigators are informed about health insurance systems and are able to aid patients in resolving access issues; and

''(E) ensure that consumers have direct access to patient navigators during regularly scheduled hours of business operation.

''(2) OUTREACH SERVICES.—A condition for the receipt of a grant under paragraph (1) is that the applicant involved agree to provide ongoing outreach activities while receiving the grant, in a manner that is culturally competent for the health disparity population served by the program, to inform the public, and the specific community that the program is serving, of the services of the model program under the grant. Such activities shall include facilitating access to appropriate health care services and patient navigators within the health care system to ensure optimal patient utilization of these services.

''(3) DATA COLLECTION AND REPORT.—

''(A) IN GENERAL.—To provide for effective program evaluation, a grant recipient under this subsection shall collect specific patient data with respect to services provided to each patient served through the program and shall establish and implement procedures and protocols, consistent with applicable Federal and State laws (including sections 160 and 164 of title 45, Code of Federal Regulations) to ensure the confidentiality of all information shared by a patient in the program (or their personal representative) and their health care providers, group health plans, or health insurance insurers.

''(B) USE OF DATA.—A grant recipient under this subsection may, consistent with applicable Federal and State confidentiality laws, collect, use, or disclose aggregate information that is not individually identifiable (as such term is defined for purposes of sections 160 and 164 of title 45 Code of Federal Regulations).

''(C) REPORT.—Using date collected under this paragraph, a grantee shall prepare and submit to the Secretary an annual report that summarizes and analyzes such data and provides information on the need for navigation services, the types of access difficulties resolved, the sources of repeated resolutions, and the flaws in the system of access, including insurance barriers.

''(4) APPLICATION FOR GRANT.—A grant may be made under paragraph (1) only if an application for the grant is submitted to the Director of the Service and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

''(5) EVALUATIONS.—

''(A) IN GENERAL.—The Director of the Service, directly or through grants or contracts, shall provide for evaluations to determine which outreach activities under paragraph (2) were most effective in informing the public, and the specific community that the program is serving, of the model program services and to determine the extent to which such programs were effective in providing culturally competent services to the health disparity population served by the programs.

''(B) DISSEMINATION OF FINDINGS.—The Director of the Service shall as appropriate disseminate to public and private entities the findings made in evaluations under subparagraph (A).

''(6) COORDINATION WITH OTHER PROGRAMS.—The Director of the Service shall coordinate the program under this subsection with the program under subsection (b), with the program under section 417D of the Public Health Service Act, and to the extent practicable, with programs for prevention centers that are carried out by the Director of the Centers for Disease Control and Prevention.

''(b) PROGRAM FOR PATIENT NAVIGATORS.—

''(1) IN GENERAL.—The Director of the Service may make grants to Indian Health Service Centers, tribal governments, urban Indian organizations, tribal organizations, and qualified nonprofit entities that enter into partnerships with public and nonprofit private health centers serving Native American populations to provide navigation services, and that demonstrate the ability to perform all the functions described in this subsection and subsections (b) and (c), for the development and operation of model programs to pay the costs of such entities in—

''(A) assigning patient navigators, in accordance with applicable criteria of the Secretary, for managing the care of individuals of health disparity populations for the duration of receiving health services from the health centers, including aid in coordinating and scheduling appointments and referrals, community outreach, assistance with transportation arrangements, and assistance with insurance issuers and other barriers to care;

''(B) ensuring that the services provided by the patient navigators to such individuals include case management and psychosocial assessment and care or information and referral to such services;

''(C) ensuring that patient navigators with direct knowledge of the communities they serve provide services to such individuals in a culturally competent manner;

''(D) developing model practices for patient navigators, including with respect to—

''(i) coordination of health services, including psychosocial assessment and care;

''(ii) follow-up services, including psychosocial assessment and care; and

''(iii) determining coverage under health insurance and health plans for all services;

''(iv) ensuring the initiation, continuation, or sustained access to care prescribed by the patients' health care providers; and

''(v) aiding patients with health insurance coverage issues;

''(E) requiring training for patient navigators to ensure the ability of such navigators to perform all of the duties required under this subsection and in subsection (a), including training to ensure that such navigators are informed about health insurance systems and are able to aid patients in resolving access issues; and

''(F) ensuring that consumers have direct access to patient navigators during regularly scheduled hours of business operation.

''(2) OUTREACH SERVICES.—A condition for the receipt of a grant under paragraph (1) is that the applicant involved agree to provide ongoing outreach activities while receiving the grant, in a manner that is culturally competent for the health disparity population served by the program, to inform the public, and the specific community that the patient navigator is serving, of the services of the model program under the grant.

''(3) DATA COLLECTION AND REPORT.—

''(A) IN GENERAL.—To provide for effective patient navigator program evaluation, a grant recipient under this subsection shall collect specific patient data with respect to navigation services provided to each patient served through the program and shall establish and implement procedures and protocols, consistent with applicable Federal and State laws (including sections 160 and 164 of title 45, Code of Federal Regulations) to ensure the confidentiality of all information shared by a patient in the program (or their personal representative) and their health care providers, group health plans, or health insurance insurers.

''(B) USE OF DATA.—A grant recipient under this subsection may, consistent with applicable Federal and State confidentiality laws, collect, use, or disclose aggregate information that is not individually identifiable (as such term is defined for purposes of sections 160 and 164 of title 45 Code of Federal Regulations).

''(C) REPORT.—Using date collected under this paragraph, a grantee shall prepare and submit to the Director of the Service an annual report that summarizes and analyzes such data and provides information on the need for navigation services, the types of access difficulties resolved, the sources of repeated resolutions, and the flaws in the system of access, including insurance barriers.

''(4) APPLICATION FOR GRANT.—A grant may be made under paragraph (1) only if an application for the grant is submitted to the Director of the Service and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

''(5) EVALUATIONS.—

''(A) IN GENERAL.—The Director of the Service, directly or through grants or contracts, shall provide for evaluations to determine the effects of the services of patient navigators on the health disparity population for whom the services were provided, taking into account the matters referred to in paragraph (1)(C).

''(B) DISSEMINATION OF FINDINGS.—The Director of the Service shall as appropriate disseminate to public and private entities the findings made in evaluations under subparagraph (A).

''(6) COORDINATION WITH OTHER PROGRAMS.—The Director of the Service shall coordinate the program under this subsection with the program under subsection (a) and with the program under section 417D of the Public Health Service Act.

''(c) REQUIREMENTS REGARDING FEES.—

''(1) IN GENERAL.—A condition for the receipt of a grant under subsection (a)(1) or (b)(1) is that the program for which the grant is made have in effect—

''(A) a schedule of fees or payments for the provision of its health care services related to the prevention and treatment of disease that is consistent with locally prevailing rates or charges and is designed to cover its reasonable costs of operation; and

''(B) a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the ability of the patient to pay.

''(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require payment for navigation services or to require payment for health care services in cases where the care is provided free of charge, including the case of services provided through programs of the Indian Health Service.

''(d) MODEL.—Not later than three years after the date of the enactment of this section, the Director of the Service shall develop a peer-reviewed model of systems for the services provided by this section. The Director shall update such model as may be necessary to ensure that the best practices are being utilized.

''(e) DURATION OF GRANT.—The period during which payments are made to an entity from a grant under subsection (a)(1) or (b)(1) may not exceed five years. The provision of such payments are subject to annual approval by the Director of the Service of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed as establishing a limitation on the number of grants under such subsection that may be made to an entity.

''(f) DEFINITIONS.—For purposes of this section:

''(1) The term 'culturally competent', with respect to providing health-related services, means services that, in accordance with standards and measures of the Secretary, are designed to effectively and efficiently respond to the cultural and linguistic needs of patients.

''(2) the term 'appropriate follow-up care' includes palliative and end-of-life care.

''(3) the term 'health disparity population' means a population where there exists a significant disparity in the overall rate of disease incidence, morbidity, mortality, or survival rates in the population as compared to the health status of the general population. Such term includes—

''(A) racial and ethnic minority groups as defined in section 1707 of the Public Health Service Act; and

''(B) medically underserved groups, such as rural and low-income individuals and individuals with low levels of literacy.

''(4)(A) the term 'patient navigator' means an individual whose functions include—

''(i) assisting and guiding patients with a symptom or an abnormal finding or diagnosis of cancer or other chronic disease within the health care system to accomplish the follow-up and diagnosis of an abnormal finding as well as the treatment and appropriate follow-up care of cancer or other chronic disease, including information about clinical trials; and

''(ii) identifying, anticipating, and helping patients overcome barriers within the health care system to ensure prompt diagnostic and treatment resolution of an abnormal finding of cancer or other chronic disease.

''(B) Such term includes representatives of the target health disparity population, such as nurses, social workers, cancer survivors, and patient advocates.

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—

''(A) MODEL PROGRAMS.—For the purpose of carrying out subsection (a) (other than the purpose described in paragraph (2)(A)), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(B) PATIENT NAVIGATORS.—For the purpose of carrying out subsection (b) (other than the purpose described in paragraph (2)(B)), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(C) BUREAU OF PRIMARY HEALTH CARE.—Amounts appropriated under subparagraph (A) or (B) shall be administered through the Bureau of Primary Health Care.

''(2) PROGRAMS IN RURAL AREAS.—

''(A) MODEL PROGRAMS.—For the purpose of carrying out subsection (a) by making grants under such subsection for model programs in rural areas, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(B) PATIENT NAVIGATORS.—For the purpose of carrying out subsection (b) by making grants under such subsection for programs in rural areas, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2004 through 2008.

''(C) OFFICE OF RURAL HEALTH POLICY.—Amounts appropriated under subparagraph (A) or (B) shall be administered through the Office of Rural Health Policy.

''(3) RELATION TO OTHER AUTHORIZATIONS.—Authorizations of appropriations under paragraphs (1) and (2) are in addition to other authorizations of appropriations that are available for the purposes described in such paragraphs.''.

By Mr. VOINOVICH:

S. 456. A bill to exclude certain wire rods from the scope of any antidumping or countervailing duty order issued as a result of certain investigations relating to carbon and certain alloy steel rods; to the Committee on Finance.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 456

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCLUSION OF CERTAIN WIRE RODS FROM ANTIDUMPING AND COUNTERVAILING DUTY ORDERS.

(a) IN GENERAL.—Notwithstanding any other provision of law, any antidumping or countervailing duty order that is issued as a result of antidumping investigations A–351–832, A–122–840, A–428–832, A–560–815, A–201–830, A–841–805, A–274–804, and A–823–812, or countervailing duty investigations C–351–833, C–122–841, C–428–833, C–274–805, and C–489–809, relating to carbon and certain alloy steel rods, shall not include wire rods that meet the American Welding Society ER70S–6 classification and are used to produce Mig Wire.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of enactment of this Act.

By Mr. LEAHY (for himself, Ms. SNOWE, Mr. ALLARD, Mr. ALLEN, Mr. BAUCUS, Mr. BINGAMAN, Mrs. BOXER, Mr. CAMPBELL, Mrs. CLINTON, Mr. COLEMAN, Ms. COLLINS, Mr. CRAIG, Mr. CRAPO, Mr. DASCHLE, Mr. DAYTON, Mr. DODD, Mr. DOMENICI, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. GRASSLEY, Mr. GREGG, Mr. HARKIN, Mr. JEFFORDS, Mr. JOHNSON, Mr. KENNEDY, Mr. KERRY, Mr. KOHL, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. NELSON of Florida, Mr. REID, Mr. ROBERTS, Mr.

ROCKEFELLER, Mr. SARBANES, Mr. SCHUMER, Mr. SMITH, Mr. SUNUNU, Mr. WARNER, Mr. WYDEN, and Ms. CANTWELL):

S. 456. A bill to remove the limitation on the use of funds to require a farm to feed livestock with organically produced feed to be certified as an organic farm; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. LEAHY. Mr. President, today I am proud to introduce with Senator SNOWE a bipartisan bill that will repeal a rider in the Omnibus Appropriations Conference Report. After the Conference Committee met and behind closed doors, this special interest rider gutted the organic standards just recently enacted by U.S. Department of Agriculture. Thirty four Senators, and counting, from both parties are joining me to repeal this special interest provision and restore credibility to the USDA organic standards.

I understand this special interest provision was inserted into the bill on behalf of a single producer who essentially wants to hijack the ''organic'' certification label for his own purposes. He wants to get a market premium for his products, without actually being an organic product.

This provision will allow producers to label their meat and dairy products ''organic'' even though they do not meet the strict criteria set forth by USDA, including the requirement that the animals be fed organically grown feed. This approach was considered and outright rejected by USDA last June. The entire organic industry opposed this weakening of the organic standards. If beef, poultry, pork and dairy producers are able to label their products as ''organic'' without using organic feed, which is one of the primary inputs, then what exactly is organic about the product?

This provision is particularly galling because so many producers have already made the commitment to organic production. For most, this is a huge financial commitment on their part. I have already heard from some large producers—General Mills, Tyson Foods—as well as scores of farmers from Vermont and around the country who are enraged by this special loophole included for one company that does not want to play by the rules.

My legislation strikes this rider from the Omnibus Appropriations Act and I hope to move it through Congress quickly before it does gut the organic meat and dairy industry. We need to send a message to all producers that if you want to benefit from the organic standards economically, you must actually meet them. When I included the ''The Organic Foods Production Act'' in the 1990 farm bill, it was because farmers recognized the growing consumer demand for organically produced products, but needed a tool to help consumers know which products were truly organic and which were not. The Act directed USDA to set minimum national standards for products labeled ''organic'' so that consumers could make informed buying decisions. The national standard also reassured farmers selling organically produced products that they would not have to follow separate rules in each state, and that their products could be labeled ''organic'' overseas.

The new standards have been enthusiastically welcomed by consumers, because through organic labeling they now can know what they are choosing and paying for when they shop. This proposal to weaken the organic standards would undermine public confidence in organic labeling, which is less than a year old.

Getting the organic standards that are behind the ''USDA Organic'' label right was a long and difficult process, but critically important to the future of the industry. Along the way, some tried to allow products treated with sewer sludge, irradiation, and antibiotics to be labeled ''organic.'' The public outcry against this was overwhelming. More than 325,000 people weighed in during the comment period, as did I. The groundswell of support for strong standards clearly showed that the public wants ''organic'' to really mean something. Those efforts to hijack the term were defeated and this one should be too.

Consumers and producers rely on the standard. I hope more members will cosponsor my bill and send a message to special interests that they cannot hijack the organic industry through a rider on the spending bill. We need to fix this mistake and restore integrity to our organic standards.

By Mr. BINGAMAN (for himself, Mrs. HUTCHISON, and Mrs. BOXER):

S. 458. A bill to establish the Southwest Regional Border Authority; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation along with Senator KAY BAILEY HUTCHISON that will help raise the standard of living for hundreds of thousands of Americans who live near the U.S.-Mexico Border. The ''Southwest Regional Border Authority Act'' would create an economic development authority for the Southwest border region, charged with awarding grants to border communities in support of their local economic development projects.

The need for a Regional Border Authority is acute: the poverty rate in the Southwest border region is 20 percent—nearly double the national average; unemployment rates in Southwest border counties often reach as high as five times the national unemployment rate; per capita personal income in the region is greatly below the national average; and lack of adequate access to capital has made it difficult for businesses to start up in the region.

In addition, the development of key infrastructures—such as water and wastewater, transportation, public health, and telecommunications—has not kept pace with the population explosion and the increase in cross-border commerce.

The counties in the Southwest border region are among the most economically distressed in the nation. In fact, there are only a few such regions of economic distress throughout the country—almost all of which are currently served by regional economic development commissions. These commissions, which are authorized by Congress, include the Appalachian Regional Commission, the Delta Regional Authority, and the Denali Commission. In order to address the needs of the border region in a similar fashion, I propose the creation of a regional economic development authority for the Southwest border.

My bill, which is modeled after the Appalachian Regional Commission, is based on four guiding principles. First, it starts from the premise that the people who live in the southwest border region know best when it comes to making decisions that affect their communities. Second, it employs a regional approach to economic development and encourages communities to work across county and state lines when appropriate. All too often, past efforts to improve the Southwest border region have hit roadblocks as a result of poor coordination and communication between communities.

Third, it creates an economic development entity that is independent—meaning it will be able to make decisions that are in the best interest of border communities, without being subject to the politics of Federal agencies. Finally, it brings together representatives of the four Southwest border States and the Federal Government as equal partners, all of whom will work to improve the quality of life and standard of living for border residents.

This is not just another commission, and it is certainly not just another grant program. I believe the Southwest Regional Border Authority not only will help leverage new private sector funding, but also will help better target Federal funding to those projects that are most likely to achieve the desired outcome of increased economic development.

The legislation accomplishes this through a sensible mechanism of development planning. Under the bill, communities in each of the four border States will work through ''local development districts'' to create development plans that reflect the needs and priorities specific to each locality. These local development plans then go to the State in which the communities are located, where they become the basis for a State development plan. The four State development plans, in turn, from the basis for a regional development plan, which is put together by the Authority. The purpose of this planning process is to ensure that local priorities are reflected in the projects funded by the Authority, while also

providing flexibility to the Authority to fund projects that are regional in nature.

This process has several advantages. First, by ensuring that Federal dollars are targeted to projects that have gone through thorough planning at the local level, we will greatly improve the probability of success for those projects—thereby increasing the Federal Government's return on its investment. Second, local development plans are essential to attracting private sector funding. Increased private investment means less need for Federal, State, and local public sector funding. Third, combining resources in such a way will help communities get more funding then they can currently get from any one program. This is particularly important now as we in Congress grapple with how to fund the needs of the border in the current budget climate.

I believe there are additional benefits to be derived from the Border Authority. As the only independent, quasi-Federal entity charged with economic development for the entire Southwest border region, the Authority will become a clearinghouse of sorts on all the funding available to the border region. This will enable the Authority to help border communities learn which programs are best suited to their needs and most likely to achieve the goals of their local development plans. Another benefit is its focus on economically distressed counties. Under the bill, the Authority can provide funding to increase the Federal share of a federal grant program to up to 90 percent of the total cost. This is particularly helpful to the many communities that are often unable to utilize federal funding because they can't afford the required local match.

For far too long the needs of the Southwest Border have been ignored, overlooked, or underfunded. I am confident that the creation of a Southwest Regional Border Authority not only will call attention to the great needs that exist along the border, but also provide resources to local communities where the dollars will do the most good. I urge the Senate to move swiftly on this legislation, and I ask my colleagues for their support.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Southwest Regional Border Authority Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) a rapid increase in population in the Southwest border region is placing a significant strain on the infrastructure of the region, including transportation, water and wastewater, public health, and telecommunications;

(2) 20 percent of the residents of the region have incomes below the poverty level;

(3) unemployment rates in counties in the region are up to 5 times the national unemployment rate;

(4) per capita personal income in the region is significantly below the national average and much of the income in the region is distributed through welfare programs, retirement programs, and unemployment payments;

(5) a lack of adequate access to capital in the region—

(A) has created economic disparities between communities in the region and communities outside the region; and

(B) has made it difficult for businesses to start up in the region;

(6) it has been difficult for displaced workers in the region to find employment because many workers—

(A) have limited English language proficiency; and

(B) lack adequate English language and job training;

(7) many residents of the region live in communities referred to as ''colonias'' that lack basic necessities, including running water, sewers, storm drainage, and electricity;

(8) many of the problems that exist in the region could be solved or ameliorated by technology that would contribute to economic development in the region;

(9) while numerous Federal, State, and local programs target financial resources to the region, those programs are often uncoordinated, duplicative, and, in some cases, unavailable to eligible border communities because those communities cannot afford the required funding match;

(10) Congress has established several regional economic development commissions, including the Appalachian Regional Commission, the Delta Regional Authority, and the Denali Commission, to improve the economies of those areas of the United States that experience the greatest economic distress; and

(11) many of the counties in the region are among the most economically distressed in the United States and would benefit from a regional economic development commission.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish a regional economic development authority for the Southwest Border region to address critical issues relating to the economic health and well-being of the residents of the region;

(2) to provide funding to communities in the region to stimulate and foster infrastructure development, technology development, community development and entrepreneurship, and education and workforce development in the region;

(3) to increase the total amount of Federal funding available for border economic development projects by coordinating with and reducing duplication of other Federal, State, and local programs; and

(4) to empower the people of the region through the use of local development districts and State and regional development plans that reflect State and local priorities.

SEC. 3. DEFINITIONS.

In this Act:

(1) ATTAINMENT COUNTY.—The term ''attainment county'' means an economically strong county that is not a distressed county or a competitive county.

(2) AUTHORITY.—The term ''Authority'' means the Southwest Regional Border Authority established by section 101(a)(1).

(3) BINATIONAL REGION.—The term ''binational region'' means the area in the United States and Mexico that is within 150 miles of the international border between the United States and Mexico.

(4) BUSINESS INCUBATOR SERVICE.—The term ''business incubator service'' means—

(A) a legal service, including aid in preparing a corporate charter, partnership agreement, or contract;

(B) a service in support of the protection of intellectual property through a patent, a trademark, or any other means;

(C) a service in support of the acquisition or use of advanced technology, including the use of Internet services and Web-based services; and

(D) consultation on strategic planning, marketing, or advertising.

(5) COMPETITIVE COUNTY.—The term ''competitive county'' means an economically strong county that meets at least 1, but not all, of the criteria for a distressed county specified in paragraph (5).

(6) DISTRESSED COUNTY.—The term ''distressed county'' means a county in the region that—

(A)(i) has a poverty rate that is at least 150 percent of the poverty rate of the United States;

(ii) has a per capita market income that is not more than 67 percent of the per capita market income of the United States; and

(iii) has a 3-year unemployment rate that is at least 150 percent of the unemployment rate of the United States; or

(B)(i) has a poverty rate that is at least 200 percent of the poverty rate of the United States; and

(ii)(I) has a per capita market income that is not more than 67 percent of the per capita market income of the United States; or

(II) has a 3-year unemployment rate that is at least 150 percent of the unemployment rate of the United States.

(7) ECONOMICALLY STRONG COUNTY.—The term ''economically strong county'' means a county in the region that is not a distressed county.

(8) FEDERAL GRANT PROGRAM.—The term ''Federal grant program'' means a Federal grant program to provide assistance in—

(A) acquiring or developing land;

(B) constructing or equipping a highway, road, bridge, or facility; or

(C) carrying out other economic development activities.

(9) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(10) ISOLATED AREA OF DISTRESS.—The term ''isolated area of distress'' means an area located in an economically strong county that has a high rate of poverty, unemployment, or outmigration, as determined by the Authority.

(11) LOCAL DEVELOPMENT DISTRICT.—The term ''local development district'' means an entity that—

(A)(i) is an economic development district that is—

(I) in existence on the date of enactment of this Act; and

(II) recognized by the Economic Development Administration; and

(III) located in the region; or

(ii) if an entity described in clause (i) does not exist—

(I) is organized and operated in a manner that ensures broad-based community participation and an effective opportunity for local officials, community leaders, and the public to contribute to the development and implementation of programs in the region;

(II) is governed by a policy board with at least a simple majority of members consisting of—

(aa) elected officials; or

(bb) designees or employees of a general purpose unit of local government that have been appointed to represent the unit of local government; and

(III) is certified by the Governor or appropriate State officer as having a charter or authority that includes the economic development of counties, portions of counties, or other political subdivisions within the region; and

(B) has not, as certified by the Federal cochairperson—

(i) inappropriately used Federal grant funds from any Federal source; or

(ii) appointed an officer who, during the period in which another entity inappropriately used Federal grant funds from any Federal source, was an officer of the other entity.

(12) REGION.—The term ''region'' means—

(A) the counties of Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Pima, Pinal, Santa Cruz, and Yuma in the State of Arizona;

(B) the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura in the State of California;

(C) the counties of Catron, Chaves, Doña Ana, Eddy, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra, and Socorro in the State of New Mexico; and

(D) the counties of Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Coke, Concho, Crane, Crockett, Culberson, Dimmit, Duval, Ector, Edwards, El Paso, Frio, Gillespie, Glasscock, Hidalgo, Hudspeth, Irion, Jeff Davis, Jim Hogg, Jim Wells, Karnes, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, La Salle, Live Oak, Loving, Mason, Maverick, McMullen, Medina, Menard, Midland, Nueces, Pecos, Presidio, Reagan, Real, Reeves, San Patricio, Shleicher, Sutton, Starr, Sterling, Terrell, Tom Green, Upton, Uvalde, Val Verde, Ward, Webb, Willacy, Wilson, Winkler, Zapata, and Zavala in the State of Texas.

(13) SMALL BUSINESS.—The term ''small business'' has the meaning given the term ''small business concern'' in section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

TITLE I—SOUTHWEST REGIONAL BORDER AUTHORITY

SEC. 101. MEMBERSHIP AND VOTING.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—There is established the Southwest Regional Border Authority.

(2) COMPOSITION.—The Authority shall be composed of—

(A) a Federal member, to be appointed by the President, by and with the advice and consent of the Senate; and

(B) State members, who shall consist of the Governor (or a designee of the Governor) of each State in the region that elects to participate in the Authority.

(3) COCHAIRPERSONS.—The Authority shall be headed by—

(A) the Federal member, who shall serve—

(i) as the Federal cochairperson; and

(ii) as a liaison between the Federal Government and the Authority; and

(B) a State cochairperson, who shall—

(i) be a Governor of a State described in paragraph (2)(B);

(ii) be elected by the State members for a term of not more than 2 years; and

(iii) serve only 1 term during any 4 year period.

(b) ALTERNATE MEMBERS.—

(1) STATE ALTERNATES.—The State member of a State described in paragraph (2)(B) may have a single alternate, who shall be—

(A) a resident of that State; and

(B) appointed by the Governor of the State, from among the members of the cabinet or personal staff of the Governor.

(2) ALTERNATE FEDERAL COCHAIRPERSON.—The President shall appoint an alternate Federal cochairperson.

(3) QUORUM.—Subject to subsection (d)(4), a State alternate member shall not be counted toward the establishment of a quorum of the members of the Authority in any case in which a quorum of the State members is required to be present.

(4) DELEGATION OF POWER.—No power or responsibility of the Authority specified in paragraph (2) or (3) of subsection (d), and no voting right of any member of the Authority, shall be delegated to any person who is not—

(A) a member of the Authority; or

(B) entitled to vote at meetings of the Authority.

(c) MEETINGS.—

(1) INITIAL MEETING.—The initial meeting of the Authority shall be conducted not later than the date that is the earlier of—

(A) 180 days after the date of enactment of this Act; or

(B) 60 days after the date on which the Federal cochairperson is appointed.

(2) OTHER MEETINGS.—The Authority shall hold meetings at such times as the Authority determines, but not less often than semiannually.

(3) LOCATION.—Meetings of the Authority shall be conducted, on a rotating basis, at a site in the region in each of the States of Arizona, California, New Mexico, and Texas.

(d) VOTING.—

(1) IN GENERAL.—To be effective, a decision by the Authority shall require the approval of the Federal cochairperson and not less than 60 percent of the State members of the Authority (not including any member representing a State that is delinquent under section 102(d)(2)(D)).

(2) QUORUM.—

(A) IN GENERAL.—A majority of the State members shall constitute a quorum.

(B) REQUIRED FOR POLICY DECISION.—A quorum of State members shall be required to be present for the Authority to make any policy decision, including—

(i) a modification or revision of a policy decision of the Authority;

(ii) approval of a State or regional development plan; and

(iii) any allocation of funds among the States.

(3) PROJECT AND GRANT PROPOSALS.—The approval of project and grant proposals shall be—

(A) a responsibility of the Authority; and

(B) conducted in accordance with section 302.

(4) VOTING BY ALTERNATE MEMBERS.—An alternate member shall vote in the case of the absence, death, disability, removal, or resignation of the Federal or State member for which the alternate member is an alternate.

SEC. 102. DUTIES AND POWERS.

(a) DUTIES.—The Authority shall—

(1) develop comprehensive and coordinated plans and programs to establish priorities and approve grants for the economic development of the region, giving due consideration to other Federal, State, and local planning and development activities in the region;

(2) conduct and sponsor investigations, research, and studies, including an inventory and analysis of the resources of the region, using, in part, the materials compiled by the Interagency Task Force on the Economic Development of the Southwest Border established by Executive Order No. 13122 (64 Fed. Reg. 29201);

(3) sponsor demonstration projects under section 207;

(4)(A) enhance the capacity of, and provide support for, local development districts in the region; or

(B) if there is no local development district described in clause (i) of section 3(11)(A) for a portion of the region, foster the creation of a local development district;

(5) review and study Federal, State, and local public and private programs and, as appropriate, recommend modifications or additions to increase the effectiveness of the programs;

(6) formulate and recommend, as appropriate, interstate and international compacts and other forms of interstate and international cooperation;

(7) encourage private investment in industrial, commercial, and recreational projects in the region;

(8) provide a forum for consideration of the problems of the region and any proposed solutions to those problems;

(9) establish and use, as appropriate, citizens, special advisory counsels, and public conferences; and

(10) provide a coordinating mechanism to avoid duplication of efforts among the border programs of the Federal agencies and the programs established under the North American Free Trade Agreement entered into by the United States, Mexico, and Canada on December 17, 1992.

(b) POWERS.—In carrying out subsection (a), the Authority may—

(1) hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute a description of the proceedings of, and reports on actions by, the Authority as the Authority considers appropriate;

(2) request from any Federal, State, or local agency such information as may be available to or procurable by the agency that may be of use to the Authority in carrying out the duties of the Authority;

(3) maintain an accurate and complete record of all transactions and activities of the Authority, to be available for audit and examination by the Comptroller General of the United States;

(4) adopt, amend, and repeal bylaws and rules governing the conduct of business and the performance of duties of the Authority;

(5) request the head of any Federal agency to detail to the Authority, for a specified period of time, such personnel as the Authority requires to carry out duties of the Authority, each such detail to be without loss of seniority, pay, or other employee status;

(6) request the head of any State department or agency or local government to detail to the Authority, for a specified period of time, such personnel as the Authority requires to carry out the duties of the Authority, each such detail to be without loss of seniority, pay, or other employee status;

(7) make recommendations to the President regarding—

(A) the expenditure of funds at the Federal, State, and local levels under this Act; and

(B) additional Federal, State, and local legislation that may be necessary to further the purposes of this Act;

(8) provide for coverage of Authority employees in a suitable retirement and employee benefit system by—

(A) making arrangements or entering into contracts with any participating State government; or

(B) otherwise providing retirement and other employee benefit coverage;

(9) accept, use, and dispose of gifts or donations of services or real, personal, tangible, or intangible property;

(10) enter into and perform such contracts, leases, cooperative agreements, or other transactions as are necessary to carry out the duties of the Authority;

(11) establish and maintain—

(A) a headquarters for the Authority, to be located at a site that is not more than 100 kilometers from the international border between the United States and Mexico; and

(B) at least 1 field office in each of the States of Arizona, California, New Mexico, and Texas, to be located at appropriate sites in the region that are not more than 100 kilometers from the international border between the United States and Mexico; and

(12) provide for an appropriate level of representation in Washington, D.C.

(c) FEDERAL AGENCY COOPERATION.—A Federal agency shall—

(1) cooperate with the Authority; and

(2) provide, on request of the Federal cochairperson, appropriate assistance in carrying out this Act, in accordance with applicable Federal laws (including regulations).

(d) ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—

(A) ADMINISTRATIVE EXPENSES.—Subject to paragraph (2), administrative expenses of the Authority shall be paid—

(i) by the Federal Government, in an amount equal to 60 percent of the administrative expenses; and

(ii) by the States in the region that elect to participate in the Authority, in an amount equal to 40 percent of the administrative expenses.

(B) EXPENSES OF FEDERAL CHAIRPERSON.—All expenses of the Federal cochairperson, including expenses of the alternate and staff of the Federal cochairperson, shall be paid by the Federal Government.

(2) STATE SHARE.—

(A) IN GENERAL.—Subject to subparagraph (C), the share of administrative expenses of the Authority to be paid by each State shall be determined by a unanimous vote of the State members of the Authority.

(B) NO FEDERAL PARTICIPATION.—The Federal cochairperson shall not participate or vote in any decision under subparagraph (A).

(C) LIMITATION.—A State shall not pay less than 10 nor more than 40 percent of the share of administrative expenses of the Authority determined under paragraph (1)(A)(ii).

(D) DELINQUENT STATES.—During any period in which a State is more than 1 year delinquent in payment of the State's share of administrative expenses of the Authority under this subsection (as determined by the Secretary)—

(i) no assistance under this Act shall be provided to the State (including assistance to a political subdivision or a resident of the State) for any project not approved as of the date of the commencement of the delinquency; and

(ii) no member of the Authority from the State shall participate or vote in any action by the Authority.

(E) EFFECT ON ASSISTANCE.—A State's share of administrative expenses of the Authority under this subsection shall not be taken into consideration in determining the amount of assistance provided to the State under title II.

SEC. 103. AUTHORITY PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—

(1) FEDERAL COCHAIRPERSON.—The Federal cochairperson shall be compensated by the Federal Government at the annual rate of basic pay prescribed for level III of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

(2) ALTERNATE FEDERAL COCHAIRPERSON.—The alternate Federal cochairperson—

(A) shall be compensated by the Federal Government at the annual rate of basic pay prescribed for level V of the Executive Schedule described in paragraph (1); and

(B) when not actively serving as an alternate for the Federal cochairperson, shall perform such functions and duties as are delegated by the Federal cochairperson.

(3) STATE MEMBERS AND ALTERNATES.—

(A) IN GENERAL.—A State shall compensate each member and alternate member representing the State on the Authority at the rate established by State law.

(B) NO ADDITIONAL COMPENSATION.—No State member or alternate member shall receive any salary, or any contribution to or supplementation of salary, from any source other than the State for services provided by the member or alternate member to the Authority.

(b) DETAILED EMPLOYEES.—

(1) IN GENERAL.—No person detailed to serve the Authority under section 102(b)(6) shall receive any salary, or any contribution to or supplementation of salary, for services provided to the Authority from—

(A) any source other than the State, local, or intergovernmental department or agency from which the person was detailed; or

(B) the Authority.

(2) VIOLATION.—Any person that violates this subsection shall be fined not more than $5,000, imprisoned not more than 1 year, or both.

(c) ADDITIONAL PERSONNEL.—

(1) COMPENSATION.—

(A) IN GENERAL.—The Authority may appoint and fix the compensation of an executive director and such other personnel as are necessary to enable the Authority to carry out the duties of the Authority.

(B) EXCEPTION.—Compensation under subparagraph (A) shall not exceed the maximum rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of that title.

(2) EXECUTIVE DIRECTOR.—The executive director shall be responsible for—

(A) carrying out the administrative duties of the Authority;

(B) directing the Authority staff; and

(C) carrying out such other duties as the Authority may assign.

(3) NO FEDERAL EMPLOYEE STATUS.—No member, alternate, officer, or employee of the Authority (other than the Federal cochairperson, the alternate Federal cochairperson, staff of the Federal cochairperson, and any Federal employee detailed to the Authority under subsection (b)) shall be considered to be a Federal employee for any purpose.

(d) CONFLICTS OF INTEREST.—

(1) IN GENERAL.—Except as provided under paragraph (2), no State member, State alternate, officer, employee, or detailee of the Authority shall participate personally and substantially as a member, alternate, officer, employee, or detailee of the Authority, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in any proceeding, application, request for a ruling or other determination, contract, claim, controversy, or other matter in which the member, alternate, officer, employee, or detailee has a financial interest.

(2) DISCLOSURE.—Paragraph (1) shall not apply if the State member, State alternate, officer, employee, or detailee—

(A) immediately advises the Authority of the nature and circumstances of the proceeding, application, request for a ruling or other determination, contract, claim, controversy, or other particular matter presenting a potential conflict of interest;

(B) makes full disclosure of the financial interest; and

(C) before the proceeding concerning the matter presenting the conflict of interest, receives a written determination by the Authority that the interest is not so substantial as to be likely to affect the integrity of the services that the Authority may expect from the State member, State alternate, officer, employee, or detailee.

(3) VIOLATION.—Any person that violates this subsection shall be fined not more than $10,000, imprisoned not more than 2 years, or both.

(e) VALIDITY OF CONTRACTS, LOANS, AND GRANTS.—The Authority may declare void any contract, loan, or grant of or by the Authority in relation to which the Authority determines that there has been a violation of subsection (b), subsection (d), or any of sections 202 through 209 of title 18, United States Code.

(f) APPLICABLE LABOR STANDARDS.—

(1) IN GENERAL.—All laborers and mechanics employed by contractors or subcontractors in the construction, alteration, or repair, including painting and decorating, of projects, buildings, and works funded by the United States under this Act, shall be paid wages at not less than the prevailing wages on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a et seq.).

(2) AUTHORITY.—With respect to the determination of wages under paragraph (1), the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan No. 14 of 1950 (64 Stat. 1267) and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c).

TITLE II—GRANTS AND DEVELOPMENT PLANNING

SEC. 201. INFRASTRUCTURE DEVELOPMENT AND IMPROVEMENT.

The Authority may approve grants to States, local governments, Indian tribes, and public and nonprofit organizations in the region for projects, approved in accordance with section 302, to develop and improve the transportation, water and wastewater, public health, and telecommunications infrastructure of the region.

SEC. 202. TECHNOLOGY DEVELOPMENT AND DEPLOYMENT.

The Authority may approve grants to small businesses, universities, national laboratories, and nonprofit organizations in the

region to research, develop, demonstrate, and deploy technology that addresses—

(1) water quality;

(2) water quantity;

(3) pollution;

(4) transportation;

(5) energy consumption;

(6) public health;

(7) border and port security; and

(8) any other related matter that stimulates job creation or enhances economic development in the region, as determined by the Authority.

SEC. 203. COMMUNITY DEVELOPMENT AND ENTREPRENEURSHIP.

The Authority may approve grants to States, local governments, Indian tribes, small businesses, and public or nonprofit entities for projects, approved in accordance with section 302—

(1) to create dynamic local economies by—

(A) recruiting businesses to the region; and

(B) increasing and expanding international trade to other countries;

(2) to foster entrepreneurship by—

(A) supporting the advancement of, and providing entrepreneurial training and education for, youths, students, and businesspersons;

(B) improving access to debt and equity capital by facilitating the establishment of development venture capital funds and other appropriate means;

(C) providing aid to communities in identifying, developing, and implementing development strategies for various sectors of the economy; and

(D)(i) developing a working network of business incubators; and

(ii) supporting entities that provide business incubator services; and

(3) to promote civic responsibility and leadership through activities that include—

(A) the identification and training of emerging leaders;

(B) the encouragement of citizen participation; and

(C) the provision of assistance for strategic planning and organization development.

SEC. 204. EDUCATION AND WORKFORCE DEVELOPMENT.

The Authority, in coordination with State and local workforce development boards, may approve grants to States, local governments, Indian tribes, small businesses, and public or nonprofit entities for projects, approved in accordance with section 302—

(1) to assist the region in obtaining the job training, employment-related education, and business development (with an emphasis on entrepreneurship) that are needed to build and maintain strong local economies; and

(2) to supplement in-plant training programs offered by State and local governments to attract new businesses to the region.

SEC. 205. FUNDING.

(a) IN GENERAL.—Funds for grants under sections 201 through 204 may be provided—

(1) entirely from appropriations to carry out this Act;

(2) in combination with funds available under another Federal grant program or other Federal program; or

(3) in combination with funds from any other source, including—

(A) State and local governments, nonprofit organizations, and the private sector in the United States;

(B) the federal and local government of, and private sector in, Mexico; and

(C) the North American Development Bank.

(b) PRIORITY OF FUNDING.—

(1) IN GENERAL.—Subject to paragraph (2), the Authority shall award funding to each State in the region for activities in accordance with an order of priority to be determined by the State.

(2) FUNDING FOR BORDER COUNTIES.—For each fiscal year, the Authority shall allocate at least 60 percent of the amounts made available under section 306 for programs and projects designed to serve the needs of—

(A) distressed counties located along the international border between the United States and Mexico; and

(B) isolated areas of distress located within counties along the international border between the United States and Mexico.

(c) BINATIONAL PROJECTS.—

(1) PROHIBITION ON PROVISION OF FUNDING TO NON-UNITED STATES ENTITIES.—The Authority shall not award funding to any entity that is not incorporated in the United States.

(2) FUNDING OF BINATIONAL PROJECTS.—The Authority may award funding to a project in which an entity that is incorporated outside the United States participates if, for any fiscal year, the entity matches with an equal amount, in cash or in-kind, the assistance received under this Act for the fiscal year.

SEC. 206. SUPPLEMENTS TO FEDERAL GRANT PROGRAMS.

(a) FINDING.—Congress finds that certain States and local communities of the region, including local development districts, may be unable to take maximum advantage of Federal grant programs for which the States and communities are eligible because—

(1) they lack the economic resources to provide the required matching share; or

(2) there are insufficient funds available under the Federal law authorizing the Federal grant program to meet pressing needs of the region.

(b) FEDERAL GRANT PROGRAM FUNDING.—Notwithstanding any provision of law limiting the Federal share, the areas eligible for assistance, or the authorizations of appropriations, under any Federal grant program, and in accordance with subsection (c), the Authority, with the approval of the Federal cochairperson and with respect to a project to be carried out in the region, may—

(1) increase the Federal share of the costs of a project under any Federal grant program to not more than 90 percent (except as provided in section 209(b)); and

(2) use amounts made available to carry out this Act to pay all or a portion of the increased Federal share.

(c) CERTIFICATIONS.—

(1) IN GENERAL.—In the case of any project for which all or any portion of the basic Federal share of the costs of the project is proposed to be paid under this section, no Federal contribution shall be made until the Federal official administering the Federal law that authorizes the Federal grant program certifies that the project—

(A) meets (except as provided in subsection (b)) the applicable requirements of the applicable Federal grant program; and

(B) could be approved for Federal contribution under the Federal grant program if funds were available under the law for the project.

(2) CERTIFICATION BY AUTHORITY.—

(A) IN GENERAL.—The certifications and determinations required to be made by the Authority for approval of projects under this Act in accordance with section 302—

(i) shall be controlling; and

(ii) shall be accepted by the Federal agencies.

(B) ACCEPTANCE BY FEDERAL COCHAIRPERSON.—In the case of any project described in paragraph (1), any finding, report, certification, or documentation required to be submitted with respect to the project to the head of the department, agency, or instrumentality of the Federal Government responsible for the administration of the Federal grant program under which the project is carried out shall be accepted by the Federal cochairperson.

SEC. 207. DEMONSTRATION PROJECTS.

(a) IN GENERAL.—For each fiscal year, the Authority may approve not more than 10 demonstration projects to carry out activities described in sections 201 through 204, of which not more than 3 shall be carried out in any 1 State.

(b) REQUIREMENTS.—A demonstration project carried out under this section shall—

(1) be carried out on a multistate or multicounty basis; and

(2) be developed in accordance with the regional development plan prepared under section 210(d).

SEC. 208. LOCAL DEVELOPMENT DISTRICTS; CERTIFICATION AND ADMINISTRATIVE EXPENSES.

(a) GRANTS TO LOCAL DEVELOPMENT DISTRICTS.—

(1) IN GENERAL.—The Authority shall make grants to local development districts to pay the administrative expenses of the local development districts.

(2) CONDITIONS FOR GRANTS.—

(A) MAXIMUM AMOUNT.—The amount of any grant awarded under paragraph (1) shall not exceed 80 percent of the administrative expenses of the local development district receiving the grant.

(B) MAXIMUM PERIOD.—No grant described in paragraph (1) shall be awarded for a period greater than 3 years to a State agency certified as a local development district.

(C) LOCAL SHARE.—The contributions of a local development district for administrative expenses may be in cash or in kind, fairly evaluated, including space, equipment, and services.

(b) DUTIES OF LOCAL DEVELOPMENT DISTRICTS.—A local development district shall—

(1) operate as a lead organization serving multicounty areas in the region at the local level;

(2) assist the Authority in carrying out outreach activities for local governments, community development groups, the business community, and the public;

(3) serve as a liaison between State and local governments, nonprofit organizations (including community-based groups and educational institutions), the business community, and citizens; and

(4) assist the individuals and entities described in paragraph (3) in identifying, assessing, and facilitating projects and programs to promote the economic development of the region.

SEC. 209. DISTRESSED COUNTIES AND AREAS AND ECONOMICALLY STRONG COUNTIES.

(a) DESIGNATIONS.—At the initial meeting of the Authority and annually thereafter, the Authority, in accordance with such criteria as the Authority may establish, shall designate—

(1) distressed counties;

(2) economically strong counties;

(3) attainment counties;

(4) competitive counties; and

(5) isolated areas of distress.

(b) DISTRESSED COUNTIES.—

(1) IN GENERAL.—For each fiscal year, the Authority shall allocate at least 50 percent of the amounts made available under section 306 for programs and projects designed to serve the needs of distressed counties and isolated areas of distress in the region.

(2) FUNDING LIMITATIONS.—The funding limitations under section 206(b) shall not apply to a project to provide transportation or basic public services to residents of 1 or more distressed counties or isolated areas of distress in the region.

(c) ECONOMICALLY STRONG COUNTIES.—

(1) ATTAINMENT COUNTIES.—Except as provided in paragraph (3), the Authority shall

not provide funds for a project located in a county designated as an attainment county under subsection (a)(3).

(2) COMPETITIVE COUNTIES.—Except as provided in paragraph (3), the Authority shall not provide more than 30 percent of the total cost of any project carried out in a county designated as a competitive county under subsection (a)(2)(B).

(3) EXCEPTIONS.—

(A) IN GENERAL.—The funding prohibition under paragraph (1) and the funding limitation under paragraph (2) shall not apply to grants to fund the administrative expenses of local development districts under section 208(a).

(B) MULTICOUNTY PROJECTS.—If the Authority determines that a project could bring significant benefits to areas of the region outside an attainment or competitive county, the Authority may waive the application of the funding prohibition under paragraph (1) and the funding limitation under paragraph (2) to—

(i) a multicounty project that includes participation by an attainment or competitive county; or

(ii) any other type of project.

(4) ISOLATED AREAS OF DISTRESS.—For a designation of an isolated area of distress for assistance to be effective, the designation shall be supported—

(A) by the most recent Federal data available; or

(B) if no recent Federal data are available, by the most recent data available through the government of the State in which the isolated area of distress is located.

SEC. 210. DEVELOPMENT PLANNING PROCESS.

(a) STATE DEVELOPMENT PLAN.—In accordance with policies established by the Authority, each State member shall submit an annual development plan for the area of the region represented by the State member to assist the Authority in determining funding priorities under section 205(b).

(b) CONSULTATION WITH INTERESTED PARTIES.—In carrying out the development planning process (including the selection of programs and projects for assistance), a State shall—

(1) consult with—

(A) local development districts; and

(B) local units of government;

(2) take into consideration the goals, objectives, priorities, and recommendations of the entities described in paragraph (1); and

(3) solicit input on and take into consideration the potential impact of the State development plan on the binational region.

(c) PUBLIC PARTICIPATION.—

(1) IN GENERAL.—The Authority and applicable State and local development districts shall encourage and assist, to the maximum extent practicable, public participation in the development, revision, and implementation of all plans and programs under this Act.

(2) REGULATIONS.—The Authority shall develop guidelines for providing public participation described in paragraph (1), including public hearings.

(d) REGIONAL DEVELOPMENT PLAN.—The Authority shall prepare an annual regional development plan that—

(1) is based on State development plans submitted under subsection (a);

(2) takes into account—

(A) the input of the private sector, academia, and nongovernmental organizations; and

(B) the potential impact of the regional development plan on the binational region;

(3) establishes 5-year goals for the development of the region;

(4) identifies and recommends to the States—

(A) potential multistate or multicounty projects that further the goals for the region; and

(B) potential development projects for the binational region; and

(5) identifies and recommends to the Authority for funding demonstration projects under section 207.

TITLE III—ADMINISTRATION

SEC. 301. PROGRAM DEVELOPMENT CRITERIA.

(a) IN GENERAL.—In considering programs and projects to be provided assistance under this Act, and in establishing a priority ranking of the requests for assistance provided to the Authority, the Authority shall follow procedures that ensure, to the maximum extent practicable, consideration of—

(1) the relationship of the project or class of projects to overall regional development;

(2) the per capita income and poverty and unemployment rates in an area;

(3) the financial resources available to the applicants for assistance seeking to carry out the project, with emphasis on ensuring that projects are adequately financed to maximize the probability of successful economic development;

(4) the socioeconomic importance of the project or class of projects in relation to other projects or classes of projects that may be in competition for the same funds;

(5) the prospects that the project for which assistance is sought will improve, on a continuing rather than a temporary basis, the opportunities for employment, the average level of income, or the economic development of the area to be served by the project; and

(6) the extent to which the project design provides for detailed outcome measurements by which grant expenditures and the results of the expenditures may be evaluated.

(b) NO RELOCATION ASSISTANCE.—No financial assistance authorized by this Act shall be used to assist a person or entity in relocating from 1 area to another, except that financial assistance may be used as otherwise authorized by this Act to attract businesses from outside the region to the region.

(c) MAINTENANCE OF EFFORT.—Funds may be provided for a program or project in a State under this Act only if the Authority determines that the level of Federal or State financial assistance provided under a law other than this Act, for the same type of program or project in the same area of the State within the region, will not be reduced as a result of funds made available by this Act.

SEC. 302. APPROVAL OF DEVELOPMENT PLANS AND PROJECTS.

(a) IN GENERAL.—A State or regional development plan or any multistate subregional plan that is proposed for development under this Act shall be reviewed by the Authority.

(b) EVALUATION BY STATE MEMBER.—An application for a grant or any other assistance for a project under this Act shall be made through and evaluated for approval by the State member of the Authority representing the applicant.

(c) CERTIFICATION.—An application for a grant or other assistance for a project shall be approved only on certification by the State member that the application for the project—

(1) describes ways in which the project complies with any applicable State development plan;

(2) meets applicable criteria under section 301;

(3) provides adequate assurance that the proposed project will be properly administered, operated, and maintained; and

(4) otherwise meets the requirements of this Act.

(d) VOTES FOR DECISIONS.—On certification by a State member of the Authority of an application for a grant or other assistance for a specific project under this section, an affirmative vote of the Authority under section 101(d) shall be required for approval of the application.

SEC. 303. CONSENT OF STATES.

Nothing in this Act requires any State to engage in or accept any program under this Act without the consent of the State.

SEC. 304. RECORDS.

(a) RECORDS OF THE AUTHORITY.—

(1) IN GENERAL.—The Authority shall maintain accurate and complete records of all transactions and activities of the Authority.

(2) AVAILABILITY.—All records of the Authority shall be available for audit and examination by the Comptroller General of the United States (including authorized representatives of the Comptroller General).

(b) RECORDS OF RECIPIENTS OF FEDERAL ASSISTANCE.—

(1) IN GENERAL.—A recipient of Federal funds under this Act shall, as required by the Authority, maintain accurate and complete records of transactions and activities financed with Federal funds and report to the Authority on the transactions and activities.

(2) AVAILABILITY.—All records required under paragraph (1) shall be available for audit by the Comptroller General of the United States and the Authority (including authorized representatives of the Comptroller General and the Authority).

(c) ANNUAL AUDIT.—The Comptroller General of the United States shall audit the activities, transactions, and records of the Authority on an annual basis.

SEC. 305. ANNUAL REPORT.

(a) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the Authority shall submit to the President and to Congress a report describing the activities carried out under this Act.

(b) CONTENTS.—

(1) IN GENERAL.—The report shall include—

(A) an evaluation of the progress of the Authority—

(i) in meeting the goals set forth in the regional development plan and the State development plans; and

(ii) in working with other Federal agencies and the border programs administered by the Federal agencies;

(B) examples of notable projects in each State;

(C) a description of all demonstration projects funded under section 306(b) during the fiscal year preceding submission of the report; and

(D) any policy recommendations approved by the Authority.

(2) INITIAL REPORT.—In addition to the contents specified in paragraph (1), the initial report submitted under this section shall include—

(A) a determination as to whether the creation of a loan fund to be administered by the Authority is necessary; and

(B) if the Authority determines that a loan fund is necessary—

(i) a request for the authority to establish a loan fund; and

(ii) a description of the eligibility criteria and performance requirements for the loans.

SEC. 306. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Authority to carry out this Act, to remain available until expended—

(1) $50,000,000 for fiscal year 2004;

(2) $75,000,000 for fiscal year 2005;

(3) $90,000,000 for fiscal year 2006;

(4) $92,000,000 for fiscal year 2007; and

(5) $94,000,000 for fiscal year 2008.

(b) DEMONSTRATION PROJECTS.—Of the funds made available under subsection (a),

$5,000,000 for each fiscal year shall be available to the Authority to carry out section 207.

SEC. 307. TERMINATION OF AUTHORITY.

The authority provided by this Act terminates effective October 1, 2008.

By Mr. LEAHY (for himself, Mr. GRAHAM of South Carolina, Ms. COLLINS, Mr. JEFFORDS, Mr. SARBANES, Mr. SCHUMER, Mr. DURBIN, Ms. LANDRIEU, Mr. NELSON of Florida, Mrs. CLINTON, and Ms. SNOWE):

S. 459. A bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, I proudly rise today to introduce the Hometown Heroes Survivors Benefits Act of 2003. I thank Senators GRAHAM of South Carolina, COLLINS, JEFFORDS, SARBANES, SCHUMER, DURBIN, LANDRIEU, NELSON of Florida, CLINTON and SNOWE for joining me as original cosponsors of this multipartisan legislation that will improve the Department of Justice's Public Safety Officers' Benefits, PSOB, Program by allowing families of public safety officers who suffer fatal heart attacks or strokes to qualify for Federal survivor benefits.

I want to begin by thanking each of our Nation's brave firefighters, emergency medical rescuers and law enforcement officers for the jobs they do for the American public day in and day out. Our public safety officers are often the first to respond to any crime or emergency situation. On September 11, the Nation saw that the first on the scene at the World Trade Center were the heroic firefighters, police officers and emergency personnel of New York City. These real-life heroes, many of whom gave the ultimate sacrifice, remind us of how important it is to support our state and local public safety partners.

I commend Congressmen ETHERIDGE, WELDON, HOYER and OXLEY for their leadership and fortitude during the last Congress on an identical bill in the House. I look forward to working with them again during the 108th Congress on this important legislation.

Last year, both the House and Senate versions of this legislation received the endorsement of the Fraternal Order of Police, National Association of Police Organizations, Congressional Fire Services Institute, International Association of Arson Investigators, International Association of Fire Chiefs, International Association of Fire Fighters, National Fire Protection Association, National Volunteer Fire Council, North American Fire Training Directors, International Fire Buff Associates, National Association of Emergency Medical Technicians, American Ambulance Association, the American Federation of State, County and Municipal Employees, along with over 50 additional national organizations. I thank all of these organizations for their unwavering support for this legislation.

Public safety officers are among our most brave and dedicated public servants. I applaud the efforts of all members of fire, law enforcement, and rescue organizations nationwide who are the first to respond to more than 1.6 million emergency calls annually whether those calls involve a crime, fire, medical emergency, spill of hazardous materials, natural disaster, act of terrorism, or transportation accident without reservation. They act with an unwavering commitment to the safety and protection of their fellow citizens, and are forever willing to selflessly sacrifice their own lives to provide safe and reliable emergency services to their communities. Sadly, this dedication to service can result in tragedy, as was evident by the bravery displayed on September 11, 2001, when scores of first responders raced to the World Trade Center and the Pentagon with no other goal but to save lives.

Every year, hundreds of public safety officers nationwide lose their lives and thousands more are injured while performing duties that subject them to great physical risks. And while we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes deserve to collect these funds.

The PSOB Program was established in 1976 to authorize a one-time financial payment to the eligible survivors of Federal, State, and local public safety officers for all line-of-duty deaths.

Two years ago, Congress improved the PSOB Program by streamlining the process for families of public safety officers killed or injured in connection with prevention, investigation, rescue or recovery efforts related to a terrorist attack. We also retroactively increased the total benefits available by $100,000 as part of the USA PATRIOT Act.

The PSOB Program currently provides approximately $262,000 in benefits to the families of law enforcement officers, firemen, emergency response squad members, and ambulance crew members who are killed in the line of duty.

Unfortunately, the issue of covering heart attack and stroke victims in the PSOB Program was not addressed at that time.

When establishing the PSOB Program, Congress placed only three limitations on the payment of benefits. No award could be paid, first, if the death was caused by the intentional misconduct of the officer or by such officer's intention to bring about his own death; second, if voluntary intoxication of the officer was the proximate cause of such officer's death; or, third, to any person otherwise entitled to a benefit if such person's action was a substantial contributing factor to the death of the officer.

In years following, however, the Justice Department began to interpret the Program's guidelines to exclude from benefits the survivors of public safety officer who die of a heart attack or stroke while acting in the line of duty, arguing that the attack must be accompanied by a traumatic injury, such as a wound or other condition of the body caused by external force, including injuries by bullets, smoke inhalation, explosives, sharp instruments, blunt objects or other physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria. Barred are those who suffer from occupational injuries, such as stress and strain.

Service-connected heart, lung, and hypertension conditions are silent killers of public safety officers nationwide. The numerous hidden health dangers dealt with by police officers, firefighters and emergency medical personnel are widely recognized, but officers face these dangers in order to carry out their sworn duty to serve and protect their fellow citizens.

Our multi-partisan bill would effectively erase any distinction between traumatic and occupational injuries. The Hometown Heroes bill will fix the loophole in the PSOB Program to ensure that the survivors of public safety officers who die of heart attacks or strokes in the line of duty or within 24 hours of a triggering effect while on duty regardless of whether a traumatic injury is present at the time of the heart attack or stroke are eligible to receive financial assistance.

I was serving my first term in the Senate when this program was established, and I firmly believe that this is what Congress meant for the survivors of our Nation's first responders to receive through the Public Safety Officers Benefits Program.

Heart attack and cardiac related deaths account for almost half of all firefighter fatalities between 45–50 deaths and an average of 13 police officer deaths each year. Yet the families of these fallen heroes are rarely eligible to receive PSOB benefits.

In January 1978, special Deputy Sheriff Bernard Demag of the Chittenden County Sheriff's Office in Vermont suffered a fatal heart attack within two hours of his chase and apprehension of an escaped juvenile whom he had been transporting. Mr. Demag's family spent nearly two decades fighting in court for workers' compensation death benefits all to no avail. Clearly, we should be treating surviving family members of officers who die in the line of duty with more decency and respect.

Public safety is dangerous, exhausting, and stressful work. A first responder's chances of suffering a heart attack or stroke greatly increase when he or she puts on heavy equipment and rushes into a burning building to fight a fire and save lives. The families of these brave public servants deserve to participate in the PSOB Program if their loved ones die of a heart attack or other cardiac related ailments while selflessly protecting us from harm.

First responders across the country now face a new series of challenges as they respond to millions of emergency calls this year. They do this with an unwavering commitment to the safety of their fellow citizens, and are forever willing to selflessly sacrifice their own lives to protect the lives and property of their fellow citizens. It is time for the Senate to show its support and appreciation for these extraordinarily brave and heroic public safety officers by passing the Hometown Heroes Survivors Benefit Act.

I ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 459

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hometown Heroes Survivors Benefits Act of 2003''.

SEC. 2. FATAL HEART ATTACK OR STROKE ON DUTY PRESUMED TO BE DEATH IN LINE OF DUTY FOR PURPOSES OF PUBLIC SAFETY OFFICER SURVIVOR BENEFITS.

Section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by adding at the end the following:

''(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke suffered while on duty, or not later than 24 hours after participating in a training exercise or responding to an emergency situation, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty.''.

SEC. 3. APPLICABILITY.

Section 1201(k) of the Omnibus Crime Control and Safe Streets Act of 1968, as added by section 2, shall apply to deaths occurring on or after January 1, 2003.

By Mrs. FEINSTEIN (for herself, Mr. MCCAIN, Mr. KYL, Mr. SCHUMER, Mrs. BOXER, Mrs. HUTCHISON, Mr. BINGAMAN, and Mr. DOMENICI):

S. 460. A bill to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 460

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State Criminal Alien Assistance Program Reauthorization Act of 2003''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 2004 THROUGH 2010.

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking ''appropriated'' and all that follows through the period and inserting the following: ''appropriated to carry out this subsection—

''(A) such sums as may be necessary for fiscal year 2003;

''(B) $750,000,000 for fiscal year 2004;

''(C) $850,000,000 for fiscal year 2005; and

''(D) $950,000,000 for each of the fiscal years 2006 through 2010.''.

Mr. MCCAIN. Mr. President, I have long worked with my colleagues from Arizona and other border states to address issues, from health care to crime, that are associated with illegal immigration. In the 107th Congress, I joined Senator FEINSTEIN, Senator KYL, and a bipartisan group of Senators to reauthorize the State Criminal Alien Assistance Program, SCAAP, to ensure that the Federal Government reimbursed States for the costs wrongly borne by local communities for the incarceration of undocumented immigrants. That bill was based on the premise that control of illegal immigration is principally the responsibility of the Federal Government.

Last November, that legislation was incorporated into the 21st Century Department of Justice Authorization Act. Despite its enactment, States and local governments continue to disproportionately bear the costs associated with incarcerating illegal immigrants. As undocumented aliens take increasingly desperate measures to cross our border with Mexico, the burden borne by States along the Southwestern border continues to grow.

The Federal Government's attempt to stem illegal immigration in Texas and California has made it increasingly difficult to cross the border in these States. Unfortunately, these actions have created a funnel effect, giving Arizona the dubious distinction of being the location of choice for illegal border crossers. Reports suggest that at least one in three of the illegal border crossers arrest traversing the U.S.-Mexico border are stopped in Arizona. Last year approximately 320 people died in the desert trying to cross the border. Additionally, the number of attacks on National Park Service Officers has increased in recent years. Property crimes are rampant along the border, leaving Arizona with the highest per-capita auto theft rate in the nation. Times have gotten so desperate that vigilante groups have begun to form with the goal of doing the job the Federal Government is failing to do.

The situation along our Southwestern border has reached a crisis. I will continue to support legislative initiatives aimed at addressing the problems that stem from illegal immigration. However, I strongly believe that the Federal Government desperately needs innovative legislation to address the source of this problem through a guest worker program. In the absence of guest worker legislation, we must continue supporting important programs, such as SCAAP, that assist the border States where the Federal Government has failed.

Covering the cost of incarcerating illegal immigrants is yet another underfunded Federal mandate thrust upon struggling State governments. Less than two weeks ago, States were struck an enormous blow when the funding for SCAAP was cut in half by the FY 2003 Omnibus appropriations bill signed into law by the President. For my own State of Arizona, this means that rather than the $24 million reimbursement Arizona received in FY 2002—which barely covered one third of the actual cost borne by the State—at best Arizona can hope to receive half that amount. Even more disconcerting are recent suggestions that this program should be cut completely, because it does not fit within the mission of the Department of Justice.

I believe that SCAAP is absolutely necessary for all States, particularly those that line our Nation's Southern border. For that reason, Senator FEINSTEIN and I are today introducing the State Criminal Alien Assistance Program Reauthorization Act of 2003. I am grateful for the opportunity to work with Senator FEINSTEIN, Senator KYL, and Congressman KOLBE, who has introduced the companion to this bill in the House of Representatives, to correct this problem. The bill we are introducing today will extend the authorization of SCAAP through 2010 and to authorize increased funding levels to ensure that States are not shortchanged and funding for this important program continues to increase.

At a time when most states are experiencing the worst budge shortfalls since the Great Depression, the Federal Government must stop shirking the cost for what is truly a Federal responsibility. It is time for us to step up to the plate and reimburse states and local communities for the costs of our failure to adequately address illegal immigration.

By Mr. DORGAN (for himself, Mr. LIEBERMAN, Mrs. CLINTON, Mr. KERRY, Mr. JEFFORDS, Mr. CORZINE, Mr. CONRAD, and Mr. AKAKA):

S. 461. A bill to establish a program to promote hydrogen fuel cells, and for other purposes; to the Committee on Finance.

Mr. DORGAN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 461

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Hydrogen Fuel Cell Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States currently imports approximately 55 percent of the oil it consumes.

(2) At present trends, reliance on foreign oil will increase to 68 percent by 2025.

(3) Nearly all of the cars and trucks run on gasoline, and they are the main reason the United States imports so much oil.

(4) Two-thirds of the 20,000,000 barrels of oil Americans use each day is used for transportation.

(5) Hydrogen fuel cell vehicles offer the best hope of dramatically reducing our dependence on foreign oil, increasing our energy security, and enhancing our environmental protection.

(6) In the spirit of the Apollo project that put a man on the moon, the United States must commit the necessary resources to develop and commercialize hydrogen fuel cell vehicles, in partnership with the private sector.

(7) In developing hydrogen fuel cell vehicles, the United States must also support the development and commercialization of stationary fuel cells to power homes and other buildings, so as to diversify energy sources, better protect the environment, provide assured power, and accelerate implementation of fuel cell technology generally.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to promote the comprehensive development, demonstration, and commercialization of hydrogen-powered fuel cells in partnership with industry;

(2) to increase our Nation's energy independence, and energy and national security in doing so;

(3) to develop a sustainable national energy strategy;

(4) to protect and strengthen the Nation's economy and standard of living;

(5) to reduce the environmental impacts of energy production, distribution, transportation, and use; and

(6) to leverage financial resources through the use of public-private partnerships.

SEC. 4. DEFINITIONS.

As used in this Act—

(1) the term ''critical technology'' means a technology that, in the opinion of the Secretary, requires understanding and development in order to take the next step needed in the development of hydrogen as an economic fuel or storage medium or in the development of fuel cell technologies as a transportation mode;

(2) the term ''fuel cell vehicle'' means a vehicle that derives all, or a significant part, of its propulsion energy from 1 or more fuel cells; and

(3) the term ''Secretary'' means the Secretary of Energy.

TITLE I—HYDROGEN AND FUEL CELL TECHNOLOGY RESEARCH AND DEVELOPMENT

SEC. 101. DEFINITIONS.

As used in this title—

(1) the term ''advisory committee'' means the advisory committee established under section 105; and

(2) the term ''critical technical issue'' means an issue that, in the opinion of the Secretary, requires understanding and development in order to take the next step needed in the development of hydrogen as an economic fuel or storage medium or in the development of fuel cell technologies as a transportation mode.

SEC. 102. HYDROGEN AND FUEL CELL RESEARCH AND DEVELOPMENT.

(a) PROGRAMS.—

(1) HYDROGEN ENERGY RESEARCH AND DEVELOPMENT PROGRAM.—The Secretary shall, in consultation with the private sector, conduct a research and development program relating to the production, storage, distribution, and use of hydrogen energy, including fueling infrastructure, with the goal of enabling the private sector to demonstrate and commercialize the use of hydrogen for transportation, industrial, commercial, residential, and utility applications.

(2) FUEL CELL TECHNOLOGY RESEARCH AND DEVELOPMENT PROGRAM.—The Secretary shall conduct fuel cell technology research and development, with the goal of commercializing fuel cell vehicles and stationary fuel cells. The program shall include advanced materials, interfaces and electronics, lower cost and advanced design, balance of plant, enhanced manufacturing processes, reforming capability, and analysis and integration of systems.

(b) ELEMENTS.—In conducting the programs authorized by this section, the Secretary shall—

(1) initiate or accelerate research and development concerning critical technical issues that will contribute to the development of more economical and environmentally sound fuel cell vehicles and hydrogen energy systems, including critical technical issues with respect to—

(A) production, with consideration of cost-effective and market-efficient production from renewable energy sources;

(B) transmission and distribution;

(C) storage, including storage of hydrogen for surface transportation applications; and

(D) use, including use in—

(i) surface transportation;

(ii) fuel cells and components;

(iii) fueling infrastructure;

(iv) stationary applications; and

(v) isolated villages, islands, and communities in which other energy sources are not available or are very expensive;

(2) give particular attention to resolving critical technical issues preventing the introduction of hydrogen energy and fuel cell vehicles into the marketplace; and

(3) survey private sector hydrogen energy and fuel cell research and development activities worldwide and take steps to ensure that such activities under this section—

(A) enhance rather than unnecessarily duplicate any available research and development; and

(B) complement rather than displace or compete with the privately funded hydrogen energy or fuel cell research and development activities of United States industry.

(c) FEDERAL FUNDING.—The Secretary shall carry out the research and development activities authorized under this section using a competitive merit review process.

(d) COST SHARING.—

(1) IN GENERAL.—The Secretary shall require a commitment from non-Federal sources of at least 20 percent of the cost of proposed research and development projects under this section.

(2) REDUCTION OR ELIMINATION.—The Secretary may reduce or eliminate the cost sharing requirement under subsection (d)(1)—

(A) if the Secretary determines that the research and development is of a basic or fundamental nature; or

(B) for technical analyses, outreach activities, and educational programs that the Secretary does not expect to result in a marketable product.

SEC. 103. COORDINATION AND CONSULTATION.

(a) SECRETARY'S RESPONSIBILITY.—The Secretary shall have overall management responsibility for carrying out programs under this Act. In carrying out such programs, the Secretary, consistent with such overall management responsibility—

(1) shall establish a central point for the coordination of all hydrogen energy and fuel cell research, development, and demonstration activities of the Department of Energy; and

(2) may use the expertise of any other Federal agency in accordance with subsection (b) in carrying out any activities under this Act, to the extent that the Secretary determines that any such agency has capabilities which would allow such agency to contribute to the purposes of this Act.

(b) ASSISTANCE.—The Secretary may, in accordance with subsection (a), obtain the assistance of any Federal agency upon written request, on a reimbursable basis or otherwise and with the consent of such agency. Each such request shall identify the assistance the Secretary considers necessary to carry out any duty under this Act.

(c) CONSULTATION.—The Secretary shall consult with other Federal agencies as appropriate, and the advisory committee, in carrying out the Secretary's authorities pursuant to this Act.

SEC. 104. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is hereby established a Technical Advisory Committee to advise the Secretary on the programs under this Act and under title II of the Hydrogen Future Act of 1996, to remain in existence for the duration of such programs.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The advisory committee shall be comprised of not fewer than 9 nor

more than 15 members appointed by the Secretary, and shall be comprised of such representatives from domestic industry, universities, professional societies, Government laboratories, and financial, environmental, and other organizations as the Secretary considers appropriate based on the Secretary's assessment of the technical and other qualifications of such representatives.

(2) TERMS.—

(A) IN GENERAL.—The term of a member of the advisory committee shall not be more than 3 years.

(B) STAGGERED TERMS.—The Secretary may appoint members of the advisory committee in a manner that allows the terms of the members serving at any time to expire at spaced intervals so as to ensure continuity in the functioning of the advisory committee.

(C) REAPPOINTMENT.—A member of the advisory committee whose term expires may be reappointed.

(3) CHAIRPERSON.—The advisory committee shall have a chairperson, who shall be elected by the members from among their number.

(c) COOPERATION.—The heads of Federal agencies shall cooperate with the advisory committee in carrying out the requirements of this section and shall furnish to the advisory committee such information as the advisory committee considers necessary to carry out this section.

(d) REVIEW.—The advisory committee shall review and make any necessary recommendations to the Secretary on—

(1) the implementation and conduct of programs under this title;

(2) the economic, technological, and environmental consequences of the deployment of technologies under this title; and

(3) means for removing barriers to implementing the technologies and programs under this title.

(e) RESPONSE TO RECOMMENDATIONS.—The Secretary shall consider, but need not adopt, any recommendations of the advisory committee under subsection (d). The Secretary shall either describe the implementation, or provide an explanation of the reasons that any such recommendations will not be implemented, in the report to Congress under section 103(b).

(f) SUPPORT.—The Secretary shall provide such staff, funds, and other support as may be necessary to enable the advisory committee to carry out its functions.

SEC. 105. REPORT TO CONGRESS.

(a) REPORT.—

(1) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act and biennially thereafter, the Secretary shall transmit to Congress a detailed report on the status and progress of the programs authorized under this title.

(2) CONTENTS.—A report under paragraph (1) shall include, in addition to any views and recommendations of the Secretary—

(A) an assessment of the effectiveness of the programs authorized under this Act;

(B) recommendations of the advisory committee for any improvements in the program that are needed, including recommendations for additional legislation; and

(C) to the extent practicable, an analysis of Federal, State, local, and private sector hydrogen- and fuel cell-related research, development, and demonstration activities to identify productive areas for increased intergovernmental and private-public sector collaboration.

SEC. 106. NATIONAL ACADEMY OF SCIENCES REVIEW.

Beginning 2 years after the date of enactment of this Act, and every 4 years thereafter, the National Academy of Sciences shall perform a review of the progress made through the programs and activities authorized under this Act and title II of the Hydrogen Future Act of 1996, and shall report to Congress on the results of such reviews.

SEC. 107. AUTHORIZATION OF APPROPRIATIONS FOR HYDROGEN PRODUCTION, STORAGE, AND TRANSPORT.

There are authorized to be appropriated to carry out hydrogen production, storage, and transport activities under this title (in addition to any amounts made available for such purposes under other Acts)—

(1) $200,000,000 for fiscal year 2004;
(2) $200,000,000 for fiscal year 2005;
(3) $200,000,000 for fiscal year 2006;
(4) $200,000,000 for fiscal year 2007;
(5) $100,000,000 for fiscal year 2008;
(6) $100,000,000 for fiscal year 2009;
(7) $100,000,000 for fiscal year 2010;
(8) $75,000,000 for fiscal year 2011;
(9) $75,000,000 for fiscal year 2012; and
(10) $50,000,000 for fiscal year 2013.

SEC. 108. AUTHORIZATION OF APPROPRIATIONS FOR FUEL CELL TECHNOLOGIES.

There are authorized to be appropriated to the Secretary for fuel cell technology activities under this title—

(1) $200,000,000 for fiscal year 2004;
(2) $250,000,000 for fiscal year 2005;
(3) $250,000,000 for fiscal year 2006;
(4) $200,000,000 for fiscal year 2007;
(5) $100,000,000 for fiscal year 2008;
(6) $100,000,000 for fiscal year 2009;
(7) $100,000,000 for fiscal year 2010;
(8) $75,000,000 for fiscal year 2011;
(9) $75,000,000 for fiscal year 2012; and
(10) $50,000,000 for fiscal year 2013.

TITLE II—DEMONSTRATION PROGRAMS

SEC. 201. FUEL CELL VEHICLE DEMONSTRATION PROGRAM.

(a) PROGRAM.—The Secretary shall establish a cost shared program to purchase, operate, and evaluate fuel cell vehicles in integrated service in Federal, tribal, State, local, or private fleets to demonstrate the viability of fuel cell vehicles in commercial use in a range of climates, duty cycles, and operating environments.

(b) COOPERATIVE AGREEMENTS.—In carrying out the program, the Secretary may enter into cooperative agreements with Federal, tribal, State, local agencies, or private entities and manufacturers of fuel cell vehicles.

(c) COMPONENTS.—The program shall include the following components:

(1) SELECTION OF PILOT FLEET SITES.—

(A) IN GENERAL.—The Secretary shall—

(i) consult with fleet managers to identify potential fleet sites; and

(ii) select 10 or more sites at which to carry out the program.

(B) CRITERIA.—The criteria for selecting fleet sites shall include—

(i) geographic diversity;

(ii) a wide range of climates, duty cycles, and operating environments;

(iii) the interest and capability of the participating agencies or entities;

(iv) the appropriateness of a site for refueling infrastructure and for maintaining the fuel cell vehicles; and

(v) such other criteria as the Secretary determines to be necessary to the success of the program.

(C) FEDERAL SITES.—At least 2 of the projects must be at Federal sites.

(2) FUELING INFRASTRUCTURE.—

(A) IN GENERAL.—The Secretary shall support the installation of the necessary refueling infrastructure at the fleet sites.

(B) CO-PRODUCTION OF HYDROGEN AND ELECTRICITY PILOT PROJECTS.—Priority shall be given to pilot projects that integrate—

(i) both vehicles and stationary electricity production; or

(ii) hydrogen production, storage, and distribution systems with end-use applications.

(3) PURCHASE OF FUEL CELL VEHICLES.—The Secretary, in consultation with the participating agencies, tribal, State, or local agency, academic institution, or private entity, shall purchase fuel cell vehicles for the program by competitive bid.

(4) OPERATION AND MAINTENANCE PERIOD.—The fuel cell vehicles shall be operated and maintained by the participating agencies or entities in regular duty cycles for a period of not less than 12 months.

(5) DATA COLLECTION, ANALYSIS, AND DISSEMINATION.—

(A) AGREEMENTS.—The Secretary shall enter into agreements with participating agencies, academic institutions, or private sector entities providing for the collection of proprietary and nonproprietary information with the program.

(B) PUBLIC AVAILABILITY.—The Secretary shall make available to all interested persons technical nonproprietary information and analyses collected under an agreement under subparagraph (A).

(C) PROPRIETARY INFORMATION.—The Secretary shall not disclose to the public any proprietary information or analyses collected under an agreement under subparagraph (A).

(6) TRAINING AND TECHNICAL SUPPORT.—The Secretary shall provide such training and technical support as fleet managers and fuel cell vehicle operators require to assure the success of the program, including training and technical support in—

(A) the installation, operation, and maintenance of fueling infrastructure;

(B) the operation and maintenance of fuel cell vehicles; and

(C) data collection.

(d) COORDINATION.—The Secretary shall ensure coordination of the program with other Federal fuel cell demonstration programs to improve efficiency, share infrastructure, and avoid duplication of effort.

(e) COST SHARING.—

(1) IN GENERAL.—The Secretary shall require a 50 percent financial commitment from participating private-sector companies or other non-Federal sources for participation in the program.

(2) COMMITMENTS.—The Secretary may require a financial commitment from participating agencies or entities based on the avoided costs for purchase, operation, and maintenance of traditional vehicles and refueling infrastructure.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $40,000,000 for fiscal year 2004;
(2) $100,000,000 for fiscal year 2005;
(3) $115,000,000 for fiscal year 2006;
(4) $115,000,000 for fiscal year 2007;
(5) $95,000,000 for fiscal year 2008;
(6) $30,000,000 for fiscal year 2009; and
(7) $15,000,000 for fiscal year 2010.

SEC. 202. HEAVY DUTY FUEL CELL VEHICLE FLEET DEMONSTRATION PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—The Secretary, in consultation with other Federal agencies, shall establish a program for entering into cooperative agreements with the private sector to demonstrate fuel cell-powered buses, trucks and other heavy duty vehicles.

(b) COST SHARING.—The non-Federal contribution for activities funded under this section shall be not less than—

(1) 20 percent for fuel infrastructure development activities; and

(2) 50 percent for demonstration activities and for development activities not described in paragraph (1).

(c) REPORTS TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, and not later than October 1, 2009, the Secretary, in consultation with other

Federal agencies, shall transmit to the appropriate congressional committees a report that—

(1) evaluates the process of developing infrastructure to accommodate fuel cell-powered buses, trucks, and heavy duty vehicles; and

(2) assesses the results of the demonstration program under this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for carrying out this demonstration program, to remain available until expended—

(1) $60,000,000 for fiscal year 2004;
(2) $90,000,000 for fiscal year 2005;
(3) $175,000,000 for fiscal year 2006;
(4) $175,000,000 for fiscal year 2007;
(5) $175,000,000 for fiscal year 2008;
(6) $135,000,000 for fiscal year 2009; and
(7) $40,000,000 for fiscal year 2010.

SEC. 203. TRIBAL STATIONARY HYBRID POWER DEMONSTRATION.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary, in cooperation with Tribes, shall develop and transmit to Congress a strategy for a demonstration and commercial application program to develop hybrid distributed power systems on tribal lands that combine—

(1) one renewable electric power generating technology of 2 megawatts or less located near the site of electric energy use; and

(2) fuel cell power generation suitable for use in distributed power systems.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for activities under this section—

(1) $1,000,000 for fiscal year 2005;
(2) $5,000,000 for fiscal year 2006;
(3) $5,000,000 for fiscal year 2007;
(4) $4,000,000 for fiscal year 2008;
(5) $3,000,000 for fiscal year 2009; and
(6) $2,000,000 for fiscal year 2010.

SEC. 204. STATIONARY FUEL CELL GRANT DEMONSTRATION PROGRAM.

(a) SOLICITATION OF PROPOSALS.—The Secretary shall solicit proposals for projects demonstrating hydrogen technologies needed to operate fuel cells in Federal, tribal, State, and local government, and academic, and private stationary applications.

(b) COMPETITIVE EVALUATION.—Each proposal submitted in response to the solicitation under this section shall be evaluated on a competitive basis using peer review. The Secretary is not required to make an award under this section in the absence of a meritorious proposal.

(c) PREFERENCE.—The Secretary shall give preference, in making an award under this section, to proposals that—

(1) are submitted jointly from consortia including academic institutions, industry, State or local governments, and Federal laboratories; and

(2) reflect proven experience and capability with technologies relevant to the projects proposed.

(d) NON-FEDERAL SHARE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall require a commitment from non-Federal sources of at least 50 percent of the costs directly relating to a demonstration project under this section.

(2) REDUCTION.—The Secretary may reduce the non-Federal requirement under paragraph (1) if the Secretary determines that the reduction is appropriate considering the technological risks involved in the project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $45,000,000 for fiscal year 2004;
(2) $85,000,000 for fiscal year 2005;
(3) $95,000,000 for fiscal year 2006;
(4) $95,000,000 for fiscal year 2007;
(5) $65,000,000 for fiscal year 2008;
(6) $50,000,000 for fiscal year 2009; and
(7) $15,000,000 for fiscal year 2010.

TITLE III—FEDERAL PURCHASE PROGRAM

SEC. 301. PROCUREMENT OF FUEL CELL VEHICLES.

(a) TRANSITION PLAN.—Each agency of the Federal Government that maintains a fleet of motor vehicles shall develop a plan for a transition of the fleet to vehicles powered by fuel cell technology, including plans for necessary fueling infrastructure, training, and maintenance and operation of such vehicles. Each such plan shall include implementation beginning no later than fiscal year 2008. Each plan shall incorporate and build on the results of completed and ongoing Federal demonstration programs, and shall include additional demonstration programs and pilot programs as necessary to test or investigate available technologies and transition procedures.

(b) REQUIREMENT.—The Secretary, in collaboration with the General Services Administration and other Federal agencies, shall purchase and place 20,000 hydrogen-powered fuel cell vehicles by 2010 in Federal fleets and the requisite fueling infrastructure.

(c) EXCEPTIONS.—The head of an executive agency is not required to procure a fuel cell vehicle under subsection (c) if—

(1) no fuel cell vehicle is available that meets the requirements of the executive agency; or

(2) it is not practicable to do so for a particular agency or instance.

(d) PROCUREMENT PLANNING.—The head of an executive agency shall incorporate into the specifications for all designs and procurements, and into the factors for the evaluation of offers received for the procurement, criteria for fuel cell vehicles that are consistent with vehicle purchasing requirements.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $10,000,000 for fiscal year 2005;
(2) $15,000,000 for fiscal year 2006;
(3) $50,000,000 for fiscal year 2007;
(4) $150,000,000 for fiscal year 2008;
(5) $175,000,000 for fiscal year 2009;
(6) $170,000,000 for fiscal year 2010;
(7) $110,000,000 for fiscal year 2011;
(8) $65,000,000 for fiscal year 2012; and
(9) $55,000,000 for fiscal year 2013.

SEC. 302. FEDERAL STATIONARY FUEL CELL POWER PURCHASE PROGRAM.

(a) PROGRAM.—The Secretary shall establish a program within 1 year after the date of enactment of this Act for the acquisition by Federal agencies of—

(1) up to 200 megawatts of commercially available fuel cell power plants;

(2) up to 200 megawatts of power generated from commercially available fuel cell power plants; or

(3) a combination thereof, by 2006 and annually thereafter for use at federally-owned or -operated facilities, Federal residences, and Federal portable applications. The Secretary shall provide funding for purchase, site engineering, installation, startup, training, operation, and maintenance costs associated with the acquisition of such power or power plants, along with any other necessary assistance.

(b) DOMESTIC ASSEMBLY.—All fuel cell systems in power plants acquired, or from which power is acquired, under subsection (a) shall be assembled in the United States.

(c) SITE SELECTION.—In the selection of federally-owned or -operated facilities as a site for the location of power plants acquired under this section, or as a site to receive power acquired under this section, priority shall be given to sites with 1 or more of the following attributes:

(1) Location (of the Federal facility or the generating power plant) in an area classified as a nonattainment area under title I of the Clean Air Act.

(2) Computer or electronic operations that are sensitive to power supply disruptions.

(3) Need for a reliable, uninterrupted power supply.

(4) Academic institution.

(5) Rural or remote location, or other factors requiring off-grid power generation.

(6) Critical manufacturing or other activities that support national security efforts.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

(1) $5,000,000 for fiscal year 2004;
(2) $10,000,000 for fiscal year 2005;
(3) $15,000,000 for fiscal year 2006;
(4) $50,000,000 for fiscal year 2007;
(5) $75,000,000 for fiscal year 2008;
(6) $85,000,000 for fiscal year 2009;
(7) $75,000,000 for fiscal year 2010;
(8) $50,000,000 for fiscal year 2011;
(9) $25,000,000 for fiscal year 2012; and
(10) $10,000,000 for fiscal year 2013.

(e) LIFE CYCLE COST BENEFIT.—Any life cycle cost benefit analysis undertaken by a Federal agency with respect to investments in fuel cell products, services, construction, and other projects shall include an analysis of environmental, power reliability, and oil dependence factors.

SEC. 303. ESTABLISHMENT OF AN INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—Not later than 120 days after the date of enactment of this Act, the Secretary shall establish an interagency task force led by the Secretary's designee and comprised of representatives of—

(1) the Office of Science and Technology Policy;

(2) the Department of Transportation;

(3) the Department of Defense;

(4) the Department of Commerce (including the National Institute of Standards and Technology);

(5) the Environmental Protection Agency;

(6) the National Aeronautics and Space Administration; and

(7) other Federal agencies as appropriate.

(b) DUTIES.—The task force shall develop a plan for carrying out titles II and III.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the requirements of this section.

TITLE IV—REMOVAL OF REGULATORY BARRIERS

SEC. 401. AMENDMENTS TO PURPA.

(a) ADOPTION OF STANDARDS.—Section 113(b) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623(b)) is amended by adding at the end the following:

''(6) DISTRIBUTED GENERATION.—Each electric utility shall provide distributed generation, combined heat and power, and district heating and cooling systems competitive access to the local distribution grid and competitive pricing of service, and shall use simplified standard contracts for the interconnection of generating facilities that have a power production capacity of 250 kilowatts or less per unit.

''(7) DISTRIBUTION INTERCONNECTIONS.—No electric utility may refuse to interconnect a generating facility with the distribution facilities of the electric utility if the owner or operator of the generating facility complies with procedures adopted by the State regulatory authority and agrees to pay the costs established by such State regulatory authority.

''(8) MINIMUM FUEL AND TECHNOLOGY DIVERSITY STANDARD.—Each electric utility shall develop a plan to minimize dependence on 1 fuel source and to ensure that the electric energy it sells to consumers is generated using a diverse range of fuels and technologies, including renewable and high-efficiency technologies.

''(9) PROHIBITED RATES AND CHARGES.—No electric utility shall charge the owner or operator of an on-site generating facility an additional standby, capacity, interconnection, or other rate or charge.''.

(b) TIME FOR ADOPTING STANDARDS.—Section 113 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2623) is further amended by adding at the end the following:

''(d) SPECIAL RULE.—For purposes of implementing paragraphs (6), (7), (8), and (9) of subsection (b), any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978, shall be deemed to be a reference to the date of enactment of this subsection.''.

SEC. 402. NET METERING.

(a) ADOPTION OF STANDARD.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(11) NET METERING.—(A) Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves.

''(B) For purposes of implementing this paragraph, any reference contained in this section to the date of enactment of the Public Utility Regulatory Policies Act of 1978, shall be deemed to be a reference to the date of enactment of this paragraph.

''(C) The Commission shall implement the standards set out in this section not later than 1 year after the date of enactment of this paragraph. Notwithstanding subsections (b) and (c) of section 112, a State may adopt alternative standards or procedures regarding net metering as defined in this section; provided that net metering service, pursuant to standards and procedures adopted by the Commission, shall be available to any electric consumer within any State notwithstanding the adoption by any State of such alternative standards or procedures.

''(D) Notwithstanding subsections (b) and (c) of section 112, each State regulatory authority shall consider and make a determination concerning whether it is appropriate to implement the standard set out in subparagraph (A) not later than 1 year after the date of enactment of this paragraph.''.

(b) SPECIAL RULES FOR NET METERING.—Section 115 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2625) is amended by adding at the end the following:

''(i) NET METERING.—

''(1) RATES AND CHARGES.—An electric utility—

''(A) shall charge the owner or operator of an on-site generating facility rates and charges that are identical to those that would be charged other electric consumers of the electric utility in the same rate class to which the owner or operator would be assigned if there were no on-site generating facility; and

''(B) shall not charge the owner or operator of an on-site generating facility any additional standby, capacity, interconnection, or other rate or charge.

''(2) MEASUREMENT.—An electric utility that sells electric energy to the owner or operator of an on-site generating facility shall measure the quantity of electric energy produced by the on-site facility, using a single meter unless the electric utility can establish to the State regulatory authority that a single meter is not technically feasible, and the quantity of electric energy consumed by the owner or operator of an on-site generating facility during a billing period is in accordance with normal metering practices.

''(3) ELECTRIC ENERGY SUPPLIED EXCEEDING ELECTRIC ENERGY GENERATED.—If the quantity of electric energy sold by the electric utility to an on-site generating facility exceeds the quantity of electric energy supplied by the on-site generating facility to the electric utility during the billing period, the electric utility may bill the owner or operator for the net quantity of electric energy sold, in accordance with normal metering practices.

''(4) ELECTRIC ENERGY GENERATED EXCEEDING ELECTRIC ENERGY SUPPLIED.—If the quantity of electric energy supplied by the on-site generating facility to the electric utility exceeds the quantity of electric energy sold by the electric utility to the on-site generating facility during the billing period—

''(A) the electric utility may bill the owner or operator of the on-site generating facility for the appropriate charges for the billing period in accordance with paragraph (2); and

''(B) the owner or operator of the on-site generating facility shall be credited for the excess kilowatt-hours generated during the billing period, with the kilowatt-hour credit appearing on the bill for the following billing period.

''(5) SAFETY AND PERFORMANCE STANDARDS.—An eligible on-site generating facility and net metering system used by an electric consumer shall be interconnected provided the facility meets all applicable safety, performance, reliability, and interconnection standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and Underwriters Laboratories.

''(6) ADDITIONAL CONTROL AND TESTING REQUIREMENTS.—The Commission, after consultation with State regulatory authorities and nonregulated electric utilities and after notice and opportunity for comment, may adopt, by rule, additional control and testing requirements for on-site generating facilities and net metering systems that the Commission determines are necessary to protect public safety and system reliability.

''(7) DEFINITIONS.—For purposes of this subsection—

''(A) the term 'eligible on-site generating facility' means—

''(i) a facility on the site of a residential electric consumer with a maximum generating capacity of 10 kilowatts or less per unit that is fueled by solar energy, wind energy, or fuel cells; or

''(ii) a facility on the site of a commercial electric consumer with a maximum generating capacity of 500 kilowatts or less per unit that is fueled solely by a renewable energy resource, landfill gas, or a high efficiency system;

''(B) the term 'renewable energy resource' means solar, wind, biomass, or geothermal energy;

''(C) the term 'high efficiency system' means fuel cells or combined heat and power; and

''(D) the term 'net metering service' means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.''.

SEC. 403. DEPARTMENT OF ENERGY STUDY.

The Secretary, in consultation with other Federal agencies, as appropriate, shall identify barriers to the introduction of portable fuel cells, including regulatory barriers, and take appropriate action to eliminate such barriers in a timely fashion.

TITLE V—TAX INCENTIVES FOR HYDROGEN FUEL CELL TECHNOLOGY

SEC. 501. HYDROGEN FUEL CELL MOTOR VEHICLE CREDIT.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. HYDROGEN FUEL CELL MOTOR VEHICLE CREDIT.

''(a) ALLOWANCE OF CREDIT.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the new qualified hydrogen fuel cell motor vehicle credit determined under subsection (b).

''(b) NEW QUALIFIED HYDROGEN FUEL CELL MOTOR VEHICLE CREDIT.—

''(1) IN GENERAL.—For purposes of subsection (a), the new qualified hydrogen fuel cell motor vehicle credit determined under this subsection with respect to a new qualified hydrogen fuel cell motor vehicle placed in service by the taxpayer during the taxable year is—

''(A) $4,000, if such vehicle has a gross vehicle weight rating of not more than 8,500 pounds,

''(B) $10,000, if such vehicle has a gross vehicle weight rating of more than 8,500 pounds but not more than 14,000 pounds,

''(C) $20,000, if such vehicle has a gross vehicle weight rating of more than 14,000 pounds but not more than 26,000 pounds, and

''(D) $40,000, if such vehicle has a gross vehicle weight rating of more than 26,000 pounds.

''(2) INCREASE FOR FUEL EFFICIENCY.—

''(A) IN GENERAL.—The amount determined under paragraph (1)(A) with respect to a new qualified hydrogen fuel cell motor vehicle which is a passenger automobile or light truck shall be increased by—

''(i) $1,000, if such vehicle achieves at least 150 percent but less than 175 percent of the 2000 model year city fuel economy,

''(ii) $1,500, if such vehicle achieves at least 175 percent but less than 200 percent of the 2000 model year city fuel economy,

''(iii) $2,000, if such vehicle achieves at least 200 percent but less than 225 percent of the 2000 model year city fuel economy,

''(iv) $2,500, if such vehicle achieves at least 225 percent but less than 250 percent of the 2000 model year city fuel economy,

''(v) $3,000, if such vehicle achieves at least 250 percent but less than 275 percent of the 2000 model year city fuel economy,

''(vi) $3,500, if such vehicle achieves at least 275 percent but less than 300 percent of the 2000 model year city fuel economy, and

''(vii) $4,000, if such vehicle achieves at least 300 percent of the 2000 model year city fuel economy.

''(B) 2000 MODEL YEAR CITY FUEL ECONOMY.—For purposes of subparagraph (A), the 2000 model year city fuel economy with respect to a vehicle shall be determined in accordance with the following tables:

''(i) In the case of a passenger automobile:

''If vehicle inertia weight class is:	**The 2000 model year city fuel economy is:**
1,500 or 1,750 lbs	43.7 mpg
2,000 lbs	38.3 mpg
2,250 lbs	34.1 mpg
2,500 lbs	30.7 mpg
2,750 lbs	27.9 mpg
3,000 lbs	25.6 mpg
3,500 lbs	22.0 mpg

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
4,000 lbs	19.3 mpg
4,500 lbs	17.2 mpg
5,000 lbs	15.5 mpg
5,500 lbs	14.1 mpg
6,000 lbs	12.9 mpg
6,500 lbs	11.9 mpg
7,000 to 8,500 lbs	11.1 mpg.

''(ii) In the case of a light truck:

"If vehicle inertia weight class is:	The 2000 model year city fuel economy is:
1,500 or 1,750 lbs	37.6 mpg
2,000 lbs	33.7 mpg
2,250 lbs	30.6 mpg
2,500 lbs	28.0 mpg
2,750 lbs	25.9 mpg
3,000 lbs	24.1 mpg
3,500 lbs	21.3 mpg
4,000 lbs	19.0 mpg
4,500 lbs	17.3 mpg
5,000 lbs	15.8 mpg
5,500 lbs	14.6 mpg
6,000 lbs	13.6 mpg
6,500 lbs	12.8 mpg
7,000 to 8,500 lbs	12.0 mpg.

''(C) VEHICLE INERTIA WEIGHT CLASS.—For purposes of subparagraph (B), the term 'vehicle inertia weight class' has the same meaning as when defined in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(3) NEW QUALIFIED HYDROGEN FUEL CELL MOTOR VEHICLE.—For purposes of this subsection, the term 'new qualified hydrogen fuel cell motor vehicle' means a motor vehicle—

''(A) which is propelled by power derived from one or more cells which convert chemical energy directly into electricity by combining oxygen with hydrogen fuel which is stored on board the vehicle in any form and may or may not require reformation prior to use,

''(B) which, in the case of a passenger automobile or light truck—

''(i) for 2003 model vehicles, has received a certificate of conformity under the Clean Air Act and meets or exceeds the equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act for that make and model year, and

''(ii) for 2004 and later model vehicles, has received a certificate that such vehicle meets or exceeds the Bin 5 Tier II emission level established in regulations prescribed by the Administrator of the Environmental Protection Agency under section 202(i) of the Clean Air Act for that make and model year vehicle,

''(C) the original use of which commences with the taxpayer,

''(D) which is acquired for use or lease by the taxpayer and not for resale, and

''(E) which is made by a manufacturer.

''(c) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(d) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) MOTOR VEHICLE.—The term 'motor vehicle' has the meaning given such term by section 30(c)(2).

''(2) CITY FUEL ECONOMY.—The city fuel economy with respect to any vehicle shall be measured in a manner which is substantially similar to the manner city fuel economy is measured in accordance with procedures under part 600 of subchapter Q of chapter I of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this section.

''(3) OTHER TERMS.—The terms 'automobile', 'passenger automobile', 'light truck', and 'manufacturer' have the meanings given such terms in regulations prescribed by the Administrator of the Environmental Protection Agency for purposes of the administration of title II of the Clean Air Act (42 U.S.C. 7521 et seq.).

''(4) REDUCTION IN BASIS.—For purposes of this subtitle, the basis of any property for which a credit is allowable under subsection (a) shall be reduced by the amount of such credit so allowed (determined without regard to subsection (c)).

''(5) NO DOUBLE BENEFIT.—The amount of any deduction or other credit allowable under this chapter with respect to a new qualified hydrogen fuel cell motor vehicle shall be reduced by the amount of credit allowed under subsection (a) for such vehicle for the taxable year.

''(6) PROPERTY USED BY TAX-EXEMPT ENTITIES.—In the case of a credit amount which is allowable with respect to a new qualified hydrogen fuel cell motor vehicle which is acquired by an entity exempt from tax under this chapter, the person which sells or leases such vehicle to the entity shall be treated as the taxpayer with respect to the vehicle for purposes of this section and the credit shall be allowed to such person, but only if the person clearly discloses to the entity at the time of any sale or lease the specific amount of any credit otherwise allowable to the entity under this section.

''(7) RECAPTURE.—The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit (including recapture in the case of a lease period of less than the economic life of a vehicle).

''(8) PROPERTY USED OUTSIDE UNITED STATES, ETC., NOT QUALIFIED.—No credit shall be allowed under subsection (a) with respect to any property referred to in section 50(b) or with respect to the portion of the cost of any property taken into account under section 179.

''(9) ELECTION TO NOT TAKE CREDIT.—No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

''(10) CARRYBACK AND CARRYFORWARD ALLOWED.—

''(A) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (c) for such taxable year (in this paragraph referred to as the 'unused credit year'), such excess shall be allowed as a credit carryback for each of the 3 taxable years beginning after the date of the enactment of this section which precede the unused credit year and a credit carryforward for each of the 20 taxable years which succeed the unused credit year.

''(B) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryback and credit carryforward under subparagraph (A).

''(11) INTERACTION WITH AIR QUALITY AND MOTOR VEHICLE SAFETY STANDARDS.—Unless otherwise provided in this section, a motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

''(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

''(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

''(e) REGULATIONS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall promulgate such regulations as necessary to carry out the provisions of this section.

''(2) COORDINATION IN PRESCRIPTION OF CERTAIN REGULATIONS.—The Secretary of the Treasury, in coordination with the Secretary of Transportation and the Administrator of the Environmental Protection Agency, shall prescribe such regulations as necessary to determine whether a motor vehicle meets the requirements to be eligible for a credit under this section.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (27), by striking the period at the end of paragraph (28) and inserting '', and'', and by adding at the end the following new paragraph:

''(29) to the extent provided in section 30B(d)(4).''.

(2) Section 55(c)(2) of such Code is amended by inserting ''30B(c),'' after ''30(b)(3)''.

(3) Section 6501(m) of such Code is amended by inserting ''30B(d)(9),'' after ''30(d)(4),''.

(4) The table of sections for subpart B of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Hydrogen fuel cell motor vehicle credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 502. CREDIT FOR INSTALLATION OF HYDROGEN FUEL CELL MOTOR VEHICLE FUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to foreign tax credit, etc.), as amended by this Act, is amended by adding at the end the following new section:

"SEC. 30C. HYDROGEN FUEL CELL MOTOR VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified hydrogen fuel cell motor vehicle refueling property.

''(b) LIMITATION.—The credit allowed under subsection (a)—

''(1) with respect to any retail hydrogen fuel cell motor vehicle refueling property, shall not exceed $30,000, and

''(2) with respect to any residential hydrogen fuel cell motor vehicle refueling property, shall not exceed $1,500.

''(c) YEAR CREDIT ALLOWED.—The credit allowed under subsection (a) shall be allowed in the taxable year in which the qualified hydrogen fuel cell motor vehicle refueling property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED HYDROGEN FUEL CELL MOTOR VEHICLE REFUELING PROPERTY.—The term 'qualified hydrogen fuel cell motor vehicle refueling property' means any property (not including a building and its structural components) if—

''(A) such property is of a character subject to the allowance for depreciation,

''(B) the original use of such property begins with the taxpayer, and

''(C) such property is for the storage or dispensing of hydrogen fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle.

In the case of hydrogen produced from another clean-burning fuel (as defined in section 179A(c)(1)), subparagraph (C) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.

''(2) RESIDENTIAL HYDROGEN FUEL CELL MOTOR VEHICLE REFUELING PROPERTY.—The term 'residential hydrogen fuel cell motor vehicle refueling property' means qualified hydrogen fuel cell motor vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL HYDROGEN FUEL CELL MOTOR VEHICLE REFUELING PROPERTY.—The term 'retail hydrogen fuel cell motor vehicle refueling property' means qualified hydrogen fuel cell motor vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, 30, and 30B, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified hydrogen fuel cell motor vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail hydrogen fuel cell motor vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year (referred to as the 'unused credit year' in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.''.

(b) INCENTIVE FOR PRODUCTION OF HYDROGEN AT QUALIFIED CLEAN-FUEL VEHICLE REFUELING PROPERTY.—Section 179A(d) of the Internal Revenue Code of 1986 (defining qualified clean-fuel vehicle refueling property) is amended by adding at the end the following new flush sentence:

''In the case of clean-burning fuel which is hydrogen produced from another clean-burning fuel, paragraph (3)(A) shall be applied by substituting 'production, storage, or dispensing' for 'storage or dispensing' both places it appears.''.

(c) MODIFICATIONS TO EXTENSION OF DEDUCTION FOR HYDROGEN REFUELING PROPERTY.—

(1) IN GENERAL.—Section 179A(f) of the Internal Revenue Code of 1986 (relating to termination) is amended by inserting ''(other than property relating to hydrogen)'' after ''property''.

(2) NONAPPLICATION OF PHASEOUT.—Section 179A(b)(1)(B) of such Code (relating to phaseout) is amended by inserting ''(other than property relating to hydrogen)'' after ''property''.

(d) CONFORMING AMENDMENTS.—

(1) Section 1016(a) of the Internal Revenue Code of 1986, as amended by this Act, is amended by striking ''and'' at the end of paragraph (28), by striking the period at the end of paragraph (29) and inserting '', and'', and by adding at the end the following new paragraph:

''(30) to the extent provided in section 30C(f).''.

(2) Section 55(c)(2) of such Code, as amended by this Act, is amended by inserting ''30C(e),'' after ''30B(e)''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1 of such Code, as amended by this Act, is amended by inserting after the item relating to section 30B the following new item:

''Sec. 30C. Hydrogen fuel cell motor vehicle refueling property credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 503. CREDIT FOR RESIDENTIAL FUEL CELL PROPERTY.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

''SEC. 25C. RESIDENTIAL FUEL CELL PROPERTY.

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 30 percent of the qualified fuel cell property expenditures made by the taxpayer during such year.

''(b) LIMITATIONS.—

''(1) MAXIMUM CREDIT.—The credit allowed under subsection (a) shall not exceed $1,000 for each kilowatt of capacity.

''(2) SAFETY CERTIFICATIONS.—No credit shall be allowed under this section for an item of property unless such property meets appropriate fire and electric code requirements.

''(c) CARRYFORWARD OF UNUSED CREDIT.—If the credit allowable under subsection (a) exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED FUEL CELL PROPERTY EXPENDITURE.—The term 'qualified fuel cell property expenditure' means an expenditure for qualified fuel cell property (as defined in section 48(a)(4)) installed on or in connection with a dwelling unit located in the United States and used as a residence by the taxpayer, including all necessary installation fees and charges.

''(2) LABOR COSTS.—Expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of such property and for piping or wiring to interconnect such property to the dwelling unit shall be taken into account for purposes of this section.

''(e) SPECIAL RULES.—For purposes of this section—

''(1) DOLLAR AMOUNTS IN CASE OF JOINT OCCUPANCY.—In the case of any dwelling unit which is jointly occupied and used during any calendar year as a residence by 2 or more individuals the following shall apply:

''(A) The amount of the credit allowable, under subsection (a) by reason of expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as 1 taxpayer whose taxable year is such calendar year.

''(B) There shall be allowable, with respect to such expenditures to each of such individuals, a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

''(2) TENANT-STOCKHOLDER IN COOPERATIVE HOUSING CORPORATION.—In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

''(3) CONDOMINIUMS.—

''(A) IN GENERAL.—In the case of an individual who is a member of a condominium management association with respect to a condominium which the individual owns, such individual shall be treated as having made the individual's proportionate share of any expenditures of such association.

''(B) CONDOMINIUM MANAGEMENT ASSOCIATION.—For purposes of this paragraph, the term 'condominium management association' means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

''(4) ALLOCATION IN CERTAIN CASES.—If less than 80 percent of the use of an item is for nonbusiness purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness purposes shall be taken into account.

''(5) WHEN EXPENDITURE MADE; AMOUNT OF EXPENDITURE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when the original installation of the item is completed.

''(B) EXPENDITURES PART OF BUILDING CONSTRUCTION.—In the case of an expenditure in connection with the construction or reconstruction of a structure, such expenditure shall be treated as made when the original use of the constructed or reconstructed structure by the taxpayer begins.

''(C) AMOUNT.—The amount of any expenditure shall be the cost thereof.

''(6) PROPERTY FINANCED BY SUBSIDIZED ENERGY FINANCING.—For purposes of determining the amount of expenditures made by any individual with respect to any dwelling unit, there shall not be taken in to account expenditures which are made from subsidized energy financing (as defined in section 48(a)(5)(C)).

''(f) BASIS ADJUSTMENTS.—For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.''.

(b) CREDIT ALLOWED AGAINST REGULAR TAX AND ALTERNATIVE MINIMUM TAX.—

(1) IN GENERAL.—Section 25C(b) of the Internal Revenue Code of 1986, as added by subsection (a), is amended by adding at the end the following new paragraph:

''(3) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for the taxable year shall not exceed the excess of—

''(A) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

''(B) the sum of the credits allowable under this subpart (other than this section) and section 27 for the taxable year.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 25C(c) of such Code, as added by subsection (a), is amended by striking ''section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section)'' and inserting ''subsection (b)(3)''.

(B) Section 23(b)(4)(B) of such Code is amended by inserting ''and section 25C'' after ''this section''.

(C) Section 24(b)(3)(B) of such Code is amended by striking ''23 and 25B'' and inserting ''23, 25B, and 25C''.

(D) Section 25(e)(1)(C) of such Code is amended by inserting ''25C,'' after ''25B,''.

(E) Section 25B(g)(2) of such Code is amended by striking ''section 23'' and inserting ''sections 23 and 25C''.

(F) Section 26(a)(1) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(G) Section 904(h) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(H) Section 1400C(d) of such Code is amended by striking ''and 25B'' and inserting ''25B, and 25C''.

(c) ADDITIONAL CONFORMING AMENDMENTS.—

(1) Section 23(c) of the Internal Revenue Code of 1986, as in effect for taxable years beginning before January 1, 2004, is amended by striking ''section 1400C'' and inserting ''sections 25C and 1400C''.

(2) Section 25(e)(1)(C) of such Code, as in effect for taxable years beginning before January 1, 2004, is amended by inserting '', 25C,'' after ''sections 23''.

(3) Subsection (a) of section 1016 of such Code, as amended by this Act, is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) to the extent provided in section 25C(f), in the case of amounts with respect to which a credit has been allowed under section 25C.''.

(4) Section 1400C(d) of such Code, as in effect for taxable years beginning before January 1, 2004, is amended by inserting ''and section 25C'' after ''this section''.

(5) The table of sections for subpart A of part IV of subchapter A of chapter 1 of such Code is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Residential fuel cell property.''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to expenditures after the date of the enactment of this Act, in taxable years ending after such date.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2003.

SEC. 504. CREDIT FOR BUSINESS INSTALLATION OF QUALIFIED FUEL CELLS.

(a) IN GENERAL.—Subparagraph (A) of section 48(a)(3) of the Internal Revenue Code of 1986 (defining energy property) is amended by striking ''or'' at the end of clause (i), by adding ''or'' at the end of clause (ii), and by inserting after clause (ii) the following new clause:

''(iii) qualified fuel cell property,''.

(b) QUALIFIED FUEL CELL PROPERTY.—Subsection (a) of section 48 is amended by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively, and by inserting after paragraph (3) the following new paragraph:

''(4) QUALIFIED FUEL CELL PROPERTY.—For purposes of this subsection—

''(A) IN GENERAL.—The term 'qualified fuel cell property' means a fuel cell power plant that—

''(i) generates electricity using an electrochemical process, and

''(ii) has an electricity-only generation efficiency greater than 30 percent at rated power.

''(B) LIMITATION.—In the case of qualified fuel cell property placed in service during the taxable year, the credit determined under paragraph (1) for such year with respect to such property shall not exceed an amount equal to the lesser of—

''(i) 30 percent of the basis of such property, including all necessary installation fees and charges, or

''(ii) $1,000 for each kilowatt of capacity of such property.

''(C) SPECIAL RULES.—For purposes of subparagraph (A)(ii)—

''(i) ELECTRICITY-ONLY GENERATION EFFICIENCY.—The electricity-only generation efficiency percentage of a fuel cell power plant is the fraction—

''(I) the numerator of which is the total useful electrical power produced by such plant at normal operating rates, and expected to be consumed in its normal application, and

''(II) the denominator of which is the lower heating value of the fuel source for such plant.

''(ii) DETERMINATIONS MADE ON BTU BASIS.—The electricity-only generation efficiency percentage shall be determined on a Btu basis.

''(D) FUEL CELL POWER PLANT.—The term 'fuel cell power plant' means an integrated system comprised of a fuel cell stack assembly and associated balance of plant components that converts a fuel into electricity using electrochemical means.''.

(c) LIMITATION.—Section 48(a)(2)(A) of the Internal Revenue Code of 1986 (relating to energy percentage) is amended to read as follows:

''(A) IN GENERAL.—The energy percentage is—

''(i) in the case of qualified fuel cell property, 30 percent, and

''(ii) in the case of any other energy property, 10 percent.''.

(d) CONFORMING AMENDMENT.—Section 29(b)(3)(A)(i)(III) of the Internal Revenue Code of 1986 is amended by striking ''section 48(a)(4)(C)'' and inserting ''section 48(a)(5)(C)''.

(e) EFFECTIVE DATE.—The amendments made by this subsection shall apply to property placed in service after the date of the enactment of this Act, under rules similar to the rules of section 48(m) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

TITLE VI—EDUCATION AND OUTREACH

SEC. 601. EDUCATION AND OUTREACH.

(a) REQUIREMENTS.—The Secretary shall work with other Federal, State, and local agencies, and academic institutions and organizations to develop a public outreach and awareness program.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary to carry out this title $7,000,000 for fiscal year 2004 and each fiscal year thereafter through fiscal year 2013.

TITLE VII—TARGETS AND TIMETABLES

SEC. 701. DEPARTMENT OF ENERGY STRATEGY.

(a) CRITICAL TECHNOLOGY PLAN.—Not later than 1 year after the date of enactment of this Act, the Secretary shall publish and transmit to Congress a plan identifying critical technologies, enabling strategies and applications, technical targets, and associated timeframes that support the commercialization of hydrogen-fueled fuel cell vehicles.

(b) CONTENTS.—The plan shall describe the activities of the Department of Energy, including a research, development, demonstration, and commercial application program for developing technologies to support—

(1) the production and deployment of 100,000 hydrogen-fueled fuel cell vehicles in the United States by 2010 and 2,500,000 of such vehicles by 2020 and annually thereafter; and

(2) the integration of hydrogen activities, with associated technical targets and timetables for the development of technologies to provide for the sale of hydrogen at fueling stations in the United States by 2010 and 2020, respectively.

(c) PROGRESS REVIEW.—The Secretary shall include in each annual budget submission a review of the progress toward meeting the numerical targets in subsection (b).

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 462. A bill to establish procedures for the acknowledgment of Indian tribes; to the Committee on Indian Affairs.

By Mr. DODD (for himself and Mr. LIEBERMAN):

S. 463. A bill to provide grants to ensure full and fair participation in certain decisionmaking processes of the Bureau of Indian Affairs; to the Committee on Indian Affairs.

Mr. DODD. Mr. President, I rise with our colleague Senator LIEBERMAN today to reintroduce two pieces of legislation intended to improve the process by which the Federal Government

acknowledges the sovereign rights of American Indians and their tribal governments. The first bill is called the Tribal Recognition and Indian Bureau Enhancement Act, or the TRIBE Act. The second bill I am introducing is a bill to provide assistance grants to financially needy tribal groups and municipalities so that those groups and towns can more fully and fairly participate in certain decision-making processes at the Bureau of Indian Affairs.

I offer these bills with a renewed sense of hope, knowing that they will contribute to the larger national conversation about how the Federal Government can best fulfill its obligations to America's native peoples. Senator CAMPBELL and Senator INOUYE have provided invaluable leadership on this issue. The bills I am reintroducing were the subject of a hearing before the Indian Affairs Committee last fall. While neither bill was reported out of Committee before the end of the last Congress, I hope that the Indian Affairs Committee will continue its work on these and related bills—including Senator CAMPBELL's recently introduced tribal recognition bill—and will see fit to address the problems that currently plague the recognition process.

Currently, there are some 200 petitions pending at the Bureau of Indian Affairs by groups from throughout our Nation seeking Federal recognition as Indian tribes. Nine of these are in the State of Connecticut. These are in addition to the two tribes already recognized in our State: the Mashantucket Pequot tribe and the Mohegan Tribal Nation.

I want to emphasize that as a State, Connecticut has embraced its two established and federally recognized tribes—the Mashantucket Pequot tribe and the Mohegan Tribe. They have generated thousands of jobs for Connecticut residents—primarily in the gaming industry. In fact, Foxwoods Casino, owned by the Mashantucket Pequot Tribe, is the largest gambling casino in the world. Both tribes have delivered hundreds of millions of dollars into the treasuries of our State and towns dollars that have been used to help meet needs in housing, health care, education, and transportation for people throughout the State.

Like any large enterprise, these casinos have placed significant demands on the roadways, water systems, and police and fire departments. By some estimates, an average of 20,000 to 40,000 people visit these two casinos every day, seven days a week, 365 days a year.

Clearly, Federal recognition is an important legal status that can profoundly change both Indian and non-Indian communities. Our experience in Connecticut has taught us that Federal recognition is too important to be treated lightly.

I would not be back before the Senate to address this issue if I did not believe that there are serious defects in the process for tribal recognition. This is a significant issue for Connecticut, but it is also a matter of concern for the entire country. The tribal recognition process is broken. And the process is harming communities and tribes across the country.

The problems with the current recognition process have been well documented and I do not intend to restate all that has been said and written about the subject in recent years. Suffice it to say that it is widely recognized that the process is failing both tribal groups and other interested parties. The General Accounting Office, in a highly-critical study released in November 2001, summarized the problem when it concluded that ''because of weaknesses in the recognition process, the basis for BIA's tribal recognition decisions is not always clear and the length of time involved can be substantial.''

Senator CAMPBELL, Chairman of the Indian Affairs Committee, has eloquently pointed out the irony that descendants of native peoples who have lived in North America for thousands of years are the only Americans that must be ''documented'' to prove their status. How much more bitter that irony has become now that a process established to be fair and considerate toward native peoples is, in many ways, working against them. Let me share with our colleagues some compelling facts, which I have referenced here on the floor of the Senate before.

Decisions on tribal petitions do not take months to make. They typically take years—and sometimes decades, thanks to understaffing and the demands of complying with FOIA requests and litigation. At its current pace, it will take well over 100 years for BIA to clear just its existing backlog of tribal recognition petitions. Can you imagine any group of Americans having to wait years or decades to have their legal rights vindicated? We would not and do not tolerate those kinds of delays in other areas of federal administrative law. Yet they are commonplace with respect to groups seeking Federal tribal status.

Tribes, towns, and other interested parties have often had their evidentiary submissions ignored. During consideration of two recent petitions, the BIA decided it would no longer accept evidence submitted on the petitions—but the agency failed to tell interested parties for eleven months. In the meantime, neighboring parties and other interested parties had spent large sums of time and money to submit voluminous additional evidence bearing on whether or not the petitions should have been granted.

In some cases, the seven mandatory criteria for recognition have been selectively ignored by BIA. In the case of the Eastern Pequot and Paucatuck Eastern Pequot petitions, two of the seven criteria for recognition were waived by the then-Assistant Secretary for Indian Affairs. According to published reports, he effectively ignored the recommendations of the historians and genealogists on his staff who had found that those criteria had not been met. In another case, there was a 70-year period during which a petitioner could produce no evidence that it continuously existed as a distinct community exhibiting political authority. The BIA's technical staff concluded that a 70-year gap was too long to support a finding of continuous existence. Despite the lack of evidence, the Assistant Secretary decided that continuous existence could be presumed, and so he went on to deem this criterion to be met and to recognize the tribe.

Again, the bottom line is that the recognition process is broken. Last year, one of our colleagues—a longtime champion for American Indian causes—called the current recognition process a ''scandal.'' I agree and I think it's bad public policy to allow Federal agencies to continue to make decisions when their decision-making procedures are so flawed.

The current process is arcane, burdensome, time consuming, difficult to understand, and too easily manipulated for political purposes. The evidence is overwhelming that the rules of recognition are being applied strictly for some and bent or ignored altogether for others. That's wrong. That's unfair. The Chairwoman of the Duwamish Tribe of Washington State has said she and her people ''have known and felt the effects of 20 years of administrative inaccuracies, delays and the blasé approach in . . . handling and . . . processing the Duwamish petitions.'' Because the process is so complicated and so different from other, more familiar, administrative procedures, it is hard for people to have confidence in the BIA's decisions—especially when the BIA appears to be applying the rules differently in different cases.

The reforms proposed by the TRIBE Act are modest. The TRIBE Act will permit any Indian group in the continental United States that desires to be acknowledged as an Indian Tribe to file a petition with the BIA. If the group can satisfy the mandatory criteria for federal acknowledgment, then the group would be recognized.

The legislation simply requires better notice to Indians and non-Indian groups. It provides for better fact-finding and it requires the Secretary to publish a complete explanation of final decisions regarding documented petitions. The bill improves the recognition process in the following specific ways: first, it would authorize $10 million per year to better enable the Bureau of Indian Affairs to consider petitions in a thorough, fair, and timely manner. Second, it would provide for improved notice of a petition to key persons who may have an interest in a petition, including: the governor and attorney general of the state where a tribe seeks recognition; other tribes; and elected leaders of towns in the vicinity of a tribe seeking recognition, third, it would require that a petitioner meets each of the seven mandatory criteria for federal recognition

spelled out in the current Code of Federal Regulations, and fourth, it would require that a decision on a petition be published in the Federal Register, which would include a detailed explanation of the findings of fact and of law with respect to each of the seven mandatory criteria for recognition.

I want to emphasize what this legislation would not do. It would not revoke or in any way alter the status of tribes whose petitions for federal recognition have already been granted. It would not restrict in any way the existing prerogatives and privileges of such tribes. Tribes will retain their right to self-determination consistent with their sovereign status. Finally, and perhaps most importantly, the TRIBE Act will not dictate outcomes or micro-manage the agency.

As I have often said, I believe that every tribal Government that is entitled to recognition should be recognized and should be recognized in an appropriately speedy process. But I also think we have to make sure that the BIA's conclusions are accurate so there won't be endless questions and disputes over the Bureau's decisions. Every recognition decision carries with it a legal significance that should endure forever. Each recognition decision made by the BIA is a foundation upon which relationships between tribes and States, tribes and towns, Indians and non-Indians will be built for generations to come. We need to make sure that the foundation upon which these lasting decisions are built is sound and will withstand the test of time. We as a Nation cannot afford to build relationships between sovereigns on the shifting sands of a broken bureaucratic procedure.

Let me close with a word about the second bill I am introducing. This bill will provide grants to allow poor tribes and municipalities an opportunity to effectively participate in important decision-making processes. When the Federal Government, through the Bureau of Indian Affairs, makes decisions that will change communities, it is only right that the government should provide a meaningful opportunity for those communities, whether tribal or non-tribal, to be heard.

As we consider how best to reform the process for tribal recognition, we ought to be guided by the firm principles embedded in the bills I am offering here today: fairness, openness, respect, and a common interest in bettering the quality of life for all Americans. I look forward to discussing these and other ideas with Chairman CAMPBELL, Senator INOUYE, and my colleagues here in the Senate, tribal leaders, and others who believe the time for reform has come.

Mr. LIEBERMAN. Mr. President, I rise to speak in support of the ''Tribal Recognition and Indian Bureau Enhancement Act.'' I am proud to join the senior Senator from Connecticut in reintroducing this legislation.

Senator DODD and I are interested in making the tribal recognition process a more fair and open process. I am aware of another bill introduced last month by Chairman CAMPBELL that also seeks to reform the Bureau of Indian Affairs' recognition process. While I am concerned with several aspects of the Senator's bill, I am nonetheless gratified to see that my colleagues on both sides of the aisle recognize that the current BIA process is fraught with problems.

I know that both Chairman CAMPBELL and Vice Chairman INOUYE want to reform the broken tribal recognition process at the BIA. I look forward to working together with both Chairman CAMPBELL and Vice Chairman INOUYE to craft and pass legislation to fix a process that Vice chairman INOUYE last year called a ''scandal.''

I would first like to reiterate my support for the recognition of our historic Indian tribes. Unfortunately, this important recognition process is not operating as it should—in particular, the decisions are murky on the criteria for recognition when, and how, they may be satisfied—and those shortcomings are undermining the legitimacy of the entire process.

The lack of public confidence in the tribal recognition process is of grave concern to me. In my home State of Connecticut, public interest in the recognition process has increased because of the ability of recognized tribes to open large casinos. Senator DODD and I introduced both of these bills in the 107th Congress in an effort to reinvigorate the process and redeem the BIA program for future generations. Our bill will codify existing recognition criteria and require the BIA to provide notice of pending petitions to various interested groups—something that will benefit both the tribes and the communities that surround them. The companion bill Senator DODD and I have introduced today will and provide the resources that stakeholders of limited means require to meaningfully participate in the process. As a whole, our two pieces of legislation move towards a stronger recognition system in which all interested persons are able to participate, and participate meaningfully.

In particular, the ''Tribal Recognition and Indian Bureau Enhancement Act'' is intended to ensure that recognition criteria are satisfied and all affected parties, including affected towns, have a change to fairly participate in the decision process. It ensures that: affected parties be given proper notice; that relevant evidence from petitioners and interested parties, including neighboring town, is properly considered; that a formal hearing may be requested, with an opportunity for witnesses to be called and with other due process procedures in place; that a transcript of the hearing is kept; that the evidence is sufficient to show that the petitioner meets the seven mandatory criteria in federal regulations; and that a complete and detailed explanation of the final decision and findings of fact are published in the Federal Register.

Having created these new procedures, our second bill is intended to ensure that all stakeholders are able to participate in them. It would provide grants to local governments and needy tribes to allow them to hire genealogists, lawyers, and other professionals necessary to participate in proceedings. Grants would be available to assist eligible parties in BIA proceedings regarding the recognition of a tribe as well as proceedings regarding whether to place land into trust for a tribe. We view these bills as working in tandem: we can't make the recognition process stronger and more transparent without giving participants the appropriate professional resources. Together, these bills insist on systemic reform while investing in ore legitimate results.

I want to stress that these bills do nothing to affect already recognized federal tribes or hinder their economic development plans. Nor do they change existing Federal tribal recognition laws. It is still my hope that tribes could support these reforms, so as to buttress the legitimacy of their recognition rulings.

I again want to express my commitment to working with members from both sides of the aisle to craft a more fair and effective tribal recognition process for the BIA. The tribal recognition process is an important issue not only for Connecticut, but for many States throughout this great Nation of ours. The process, unfortunately, is broken, and we should come together to fix it for the benefit of all involved. I look forward to working with Senators DODD, Chairman CAMPBELL, and Vice Chairman INOUYE on legislation to create a better recognition process.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 66—AUTHORIZING EXPENDITURES BY COMMITTEES OF THE SENATE FOR THE PERIODS MARCH 1, 2003, THROUGH SEPTEMBER 30, 2003, OCTOBER 1, 2003, THROUGH SEPTEMBER 30, 2004, AND OCTOBER 1, 2004, THROUGH FEBRUARY 28, 2005.

Mr. LOTT (for himself and Mr. DODD) submitted the following resolution; which was submitted and read:

S. RES. 66

Resolved,

SECTION 1. AGGREGATE AUTHORIZATION.

(a) IN GENERAL.—For purposes of carrying out the powers, duties, and functions under the Standing Rules of the Senate, and under the appropriate authorizing resolutions of the Senate there is authorized for the period March 1, 2003, through September 30, 2003, in the aggregate of $48,264,374, for the period October 1, 2003, through September 30, 2004, in the aggregate of $84,961,067, and for the period October 1, 2004, through February 28, 2005, in the aggregate of $36,221,156, in accordance with the provisions of this resolution, for standing committees of the Senate, the Special Committee on Aging, the Select

Committee on Intelligence, and the Committee on Indian Affairs.

(b) AGENCY CONTRIBUTIONS.—There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committees for the period March 1, 2003, through September 30, 2003, for the period October 1, 2003, through September 30, 2004, and for the period October 1, 2004, through February 28, 2005, to be paid from the appropriations account for ''Expenses of Inquiries and Investigations'' of the Senate.

SEC. 2. COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Agriculture, Nutrition, and Forestry is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $1,949,860, of which amount—

(1) not to exceed $150,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $40,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $3,431,602, of which amount—

(1) not to exceed $150,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $40,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $1,462,700, of which amount—

(1) not to exceed $150,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $40,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 3. COMMITTEE ON ARMED SERVICES.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Armed Services is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $3,594,172, of which amount—

(1) not to exceed $80,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $30,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $6,328,829, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $30,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,698,836, of which amount—

(1) not to exceed $50,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $30,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 4. COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Banking, Housing, and Urban Affairs is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $2,979,871, of which amount—

(1) not to exceed $11,667, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $496, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $5,244,760, of which amount—

(1) not to exceed $20,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $850, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,235,697, of which amount—

(1) not to exceed $8,333, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $354, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 5. COMMITTEE ON THE BUDGET.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraph 1 of rule XXVI of the Standing Rules of the Senate, the Committee on the Budget is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $3,136,108, of which amount—

(1) not to exceed $40,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $4,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $5,522,410, of which amount—

(1) not to exceed $40,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $4,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,355,010, of which amount—

(1) not to exceed $40,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $4,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 6. COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Commerce, Science, and Transportation is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $3,227,950, of which amount—

(1) not to exceed $30,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $5,681,955, of which amount—

(1) not to exceed $30,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,422,263, of which amount—

(1) not to exceed $30,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 7. COMMITTEE ON ENERGY AND NATURAL RESOURCES.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Energy and Natural Resources is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $2,724,301.

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $4,795,783.

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,044,614.

SEC. 8. COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Environment and Public Works is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $2,516,590, of which amount—

(1) not to exceed $4,667, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $1,167, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $4,427,783, of which amount—

(1) not to exceed $8,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $2,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $1,886,876, of which amount—

(1) not to exceed $3,333, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $833, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 9. COMMITTEE ON FINANCE.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Finance is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $3,511,242, of which amount—

(1) not to exceed $17,500, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $5,833, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $6,179,693, of which amount—

(1) not to exceed $30,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $10,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,634,121, of which amount—

(1) not to exceed $12,500, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $4,167, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 10. COMMITTEE ON FOREIGN RELATIONS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Foreign Relations is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $2,884,041, of which amount—

(1) not to exceed $210,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $5,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $5,078,940, of which amount—

(1) not to exceed $210,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $5,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $2,166,036, of which amount—

(1) not to exceed $210,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $5,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 11. COMMITTEE ON GOVERNMENTAL AFFAIRS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Governmental Affairs is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $4,764,738, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $8,387,779, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $3,576,035, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(e) INVESTIGATIONS.—

(1) IN GENERAL.—The committee, or any duly authorized subcommittee of the committee, is authorized to study or investigate—

(A) the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public;

(B) the extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(C) organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities;

(D) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety; including but not limited to investment fraud schemes, commodity and security fraud, computer fraud, and the use of offshore banking and corporate facilities to carry out criminal objectives;

(E) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(i) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(ii) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge and talents;

(iii) the adequacy of present intergovernmental relations between the United States and international organizations principally concerned with national security of which the United States is a member; and

(iv) legislative and other proposals to improve these methods, processes, and relationships;

(F) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to, their performance with respect to—

(i) the collection and dissemination of accurate statistics on fuel demand and supply;

(ii) the implementation of effective energy conservation measures;

(iii) the pricing of energy in all forms;

(iv) coordination of energy programs with State and local government;

(v) control of exports of scarce fuels;

(vi) the management of tax, import, pricing, and other policies affecting energy supplies;

(vii) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(viii) the allocation of fuels in short supply by public and private entities;

(ix) the management of energy supplies owned or controlled by the Government;

(x) relations with other oil producing and consuming countries;

(xi) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies; and

(xii) research into the discovery and development of alternative energy supplies; and

(G) the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.

(2) EXTENT OF INQUIRIES.—In carrying out the duties provided in paragraph (1), the inquiries of this committee or any subcommittee of the committee shall not be construed to be limited to the records, functions, and operations of any particular branch of the Government and may extend to the records and activities of any persons, corporation, or other entity.

(3) SPECIAL COMMITTEE AUTHORITY.—For the purposes of this subsection, the committee, or any duly authorized subcommittee of the committee, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 2003, through February 28, 2005, is authorized, in its, his, or their discretion—

(A) to require by subpoena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents;

(B) to hold hearings;

(C) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate;

(D) to administer oaths; and

(E) to take testimony, either orally or by sworn statement, or, in the case of staff members of the Committee and the Permanent Subcommittee on Investigations, by deposition in accordance with the Committee Rules of Procedure.

(4) AUTHORITY OF OTHER COMMITTEES.—Nothing contained in this subsection shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946.

(5) SUBPOENA AUTHORITY.—All subpoenas and related legal processes of the committee and its subcommittee authorized under S. Res. 54, agreed to March 8, 2001 (107th Congress) are authorized to continue.

SEC. 12. COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Health, Education, Labor, and Pensions is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $4,236,427, of which amount—

(1) not to exceed $32,500, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $25,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $7,457,494, of which amount—

(1) not to exceed $32,500, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $25,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $3,179,327, of which amount—

(1) not to exceed $32,500, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $25,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 13. COMMITTEE ON THE JUDICIARY.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on the Judiciary is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $4,605,727, of which amount—

(1) not to exceed $200,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $8,110,222, of which amount—

(1) not to exceed $200,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $3,458,551, of which amount—

(1) not to exceed $200,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 14. COMMITTEE ON RULES AND ADMINISTRATION.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Rules and Administration is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $1,288,413, of which amount—

(1) not to exceed $30,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $6,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $2,269,014, of which amount—

(1) not to exceed $50,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $10,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $967,696, of which amount—

(1) not to exceed $21,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $4,200, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 15. COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Small Business and Entrepreneurship is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $1,215,913, of which amount—

(1) not to exceed $10,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $10,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $2,139,332, of which amount—

(1) not to exceed $10,000, may be expended for the procurement of the services of individual consultants, or organizations thereof

(as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $10,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $911,668, of which amount—

(1) not to exceed $10,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $10,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 16. COMMITTEE ON VETERANS' AFFAIRS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $1,112,475, of which amount—

(1) not to exceed $59,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $5,900, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $1,958,451, of which amount—

(1) not to exceed $100,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $10,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $834,987, of which amount—

(1) not to exceed $42,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $4,200, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 17. SPECIAL COMMITTEE ON AGING.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions imposed by section 104 of S. Res. 4, agreed to February 4, 1977 (Ninety-fifth Congress), and in exercising the authority conferred on it by such section, the Special Committee on Aging is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $1,347,927, of which amount—

(1) not to exceed $117,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $5,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $2,372,258, of which amount—

(1) not to exceed $200,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $5,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $1,011,165, of which amount—

(1) not to exceed $85,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $5,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 18. SELECT COMMITTEE ON INTELLIGENCE.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under S. Res. 400, agreed to May 19, 1976 (94th Congress), in accordance with its jurisdiction under section 3(a) of that resolution, including holding hearings, reporting such hearings, and making investigations as authorized by section 5 of that resolution, the Select Committee on Intelligence is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $2,117,309, of which amount not to exceed $37,917, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $3,726,412, of which amount not to exceed $65,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $1,588,401, of which amount not to exceed $27,083, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946).

SEC. 19. COMMITTEE ON INDIAN AFFAIRS.

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions imposed by section 105 of S. Res. 4, agreed to February 4, 1977 (95th Congress), and in exercising the authority conferred on it by that section, the Committee on Indian Affairs is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $1,051,310, of which amount not to exceed $1,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $1,848,350, of which amount not to exceed $1,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $787,173, of which amount not to exceed $1,000, may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of that Act).

SEC. 20. SPECIAL RESERVE.

(a) ESTABLISHMENT.—Within the funds in the account ''Expenses of Inquiries and Investigations'' appropriated by the legislative branch appropriation Acts for fiscal years 2003, 2004, and 2005, there is authorized to be established a special reserve to be available to any committee funded by this resolution as provided in subsection (b) of which—

(1) an amount not to exceed $3,500,000, shall be available for the period March 1, 2003, through September 30, 2003; and

(2) an amount not to exceed $6,000,000, shall be available for the period October 1, 2003, through September 30, 2004; and

(3) an amount not to exceed $2,500,000, shall be available for the period October 1, 2004, through February 28, 2005.

(b) AVAILABILITY.—The special reserve authorized in subsection (a) shall be available to any committee—

(1) on the basis of special need to meet unpaid obligations incurred by that committee during the periods referred to in paragraphs (1) and (2) of subsection (a); and

(2) at the request of a Chairman and Ranking Member of that committee subject to the approval of the Chairman and Ranking Member of the Committee on Rules and Administration.

SENATE RESOLUTION 67—EXPRESSING THE SENSE OF THE SENATE THAT ALAN GREENSPAN, THE CHAIRMAN OF THE FEDERAL RESERVE BOARD, SHOULD BE RECOGNIZED FOR HIS OUTSTANDING LEADERSHIP OF THE FEDERAL RESERVE, HIS EXEMPLARY CONDUCT AS FEDERAL RESERVE CHAIRMAN, AND HIS COMMITMENT AS A PUBLIC SERVANT

Mr. SCHUMER (for himself, Mr. CORZINE, Mr. CARPER, and Ms. STABENOW) submitted the following resolution; which was referred to the Committee on Banking, Housing, and Urban Affairs:

S. RES. 67

Whereas Chairman Alan Greenspan has provided leadership to the Federal Reserve for nearly fifteen years;

Whereas Chairman Greenspan has led the formulation of United States monetary policy through a time of significant economic expansion and low interest rates;

Whereas Chairman Greenspan has provided a steadying hand on policy during periods of great financial risk for the United States economy;

Whereas Chairman Greenspan possesses the wisdom of experience and the confidence of the public to continue to lead monetary policy through future economic cycles;

Whereas Chairman Greenspan has carefully upheld the responsibility of the Federal Reserve to be unbiased and impartial in its decision making; and

Whereas the Senate has the duty to provide oversight of the Federal Reserve: Now, therefore, be it

Resolved, That it is the sense of the Senate that Alan Greenspan, the Chairman of the Federal Reserve Board, should be recognized for his outstanding leadership of the Federal Reserve, his exemplary conduct as Federal Reserve chairman, and his commitment as a public servant.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, February 26, 2003, at 9:30 a.m., in closed session to receive a classified briefing on planning for post conflict Iraq.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Wednesday, February 26, 2003, at 9:30 a.m., to conduct an oversight hearing on ''The Federal Deposit Insurance System.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, February 26, 2003, on SUV safety.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, February 26 at 10:00 a.m. for purposes of conducting a business meeting to consider pending calendar business.

1. Agenda Item #5: S. 273—To direct the Secretary of the Interior to acquire specified State lands within the boundaries of Grand Teton National Park by donation, purchase, or exchange for specified Federal lands of equal value in Wyoming.

2. Agenda Item #6: S. 302—To direct the Secretary of the Interior to acquire specified lands from willing sellers for addition to Golden Gate National Recreation Area in the State of California.

3. Agenda Item #7: Nomination of Joseph Kelliher to be a Member of the Federal Energy Regulatory Commission.

4. Agenda Item #8: Views and Estimates of the Committee on Energy and Natural Resources with respect to those portions of the budget for fiscal year 2004 within the jurisdiction of this Committee.

In addition, the Committee may turn to any other measures that are ready for consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, February 26, 2003 at 9:30 am to conduct a hearing to receive testimony from Christine Todd Whitman, Administrator of the EPA, on the proposed FY 2004 EPA budget.

The meeting will be held in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session during the session on Wednesday, February 26, 2003, at 10:00 a.m., to markup an original bill entitled, the Miscellaneous Trade and Technical Corrections Act of 2003.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 26, 2003, at 10:30 a.m., to hold a hearing on Post Conflict Afghanistan: A Perspective on Revitalization & Reconstruction.

Guest: His Excellency Hamid Karzai, President, The Transitional Islamic Republic of Afghanistan, Kabul, Afghanistan.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, February 26, 2003, at 10:00 a.m. for a hearing entitled ''Consolidating Intelligence Analysis: A Review of the President's Proposal to Create a Terrorist Threat Integration Center-Day 2.''

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 26, 2003, at 10:00 a.m., in Room 485 of the Russell Senate Office Building to conduct a business meeting on pending Committee business, to be followed immediately by a hearing on the President's FY 2004 Budget for Indian Programs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON RULES AND ADMINISTRATION

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Rules and Administration by authorized to meet during the session of the Senate on Wednesday, February 26, 2003, at 9:15 a.m., to mark up an original resolution authorizing expenditures by committees of the Senate for the period March 1, 2003, through February 28, 2005.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. SPECTER. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, February 26, 2003, for a hearing on the Administration's proposed Fiscal Year 2004 Department of Veterans Affairs budget.

The hearing will take place in room 418 of the Russell Senate Office Building at 4 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOINT ECONOMIC COMMITTEE

Mr. SPECTER. Mr. President, I ask unanimous consent that the Joint Economic Committee be authorized to

meet during the session of the Senate in Room 628 of the Dirksen Senate Office Building, Wednesday, February 26, 2003, at 2:30 p.m. until 5 p.m. to conduct a hearing.

The PRESIDING OFFICER. Without objection, it is so ordered.

APPOINTMENT

Mr. FRIST. Mr. President, I ask unanimous consent that the appointment that is at the desk appear separately in the RECORD as if made by the Chair.

The PRESIDING OFFICER. Without objection, it is so ordered. The Chair, on behalf of the Majority Leader, pursuant to Public law 107–273, announces the appointment of the following individuals as members of the Antitrust Modernization Commission: Steve Cannon, of Virginia, and Makan Delrahim, of the District of Columbia.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar No. 33 and all nominations on the Secretary's Desk.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations were considered and confirmed, as follows:

ARMY

The following named officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Steven J. Hashem, 9921

NOMINATIONS PLACED ON THE SECRETARY'S DESK

PN324 Army nominations (59) beginning DONOVAN G GREEN, and ending DANIEL M WILLIAMS, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

MARINE CORPS

PN325 Marine Corps nomination of Karl G. Hartenstine, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN330 Marine Corps nomination of Leland W. Suttee, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN331 Marine Corps nomination of Carlos D. Sanabria, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN332 Marine Corps nomination of John W. Bradway, Jr., which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN333 Marine Corps nomination of Kathleen A. Hoard, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN334 Marine Corps nomination of Jeffrey A. Fultz, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN335 Marine Corps nomination of Eric R. McBee, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN336 Marine Corps nominations (5) beginning CHRISTOPHER J. AMBS, and ending DOUGLAS E. WEDDLE, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN337 Marine Corps nominations (4) beginning ROBERT E. COTE, and ending FRANK L. WHITE, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN338 Marine Corps nominations (4) beginning CHARLES W. ANDERSON, and ending JERRY B. SCHMIDT, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN340 Marine Corps nominations (2) beginning DOUGLAS M. FINN, and ending RONALD P. HEFLIN, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN341 Marine Corps nominations (2) beginning CALVIN L. HYNES, and ending CHARLES S. MORROW, JR., which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

NAVY

PN301 Navy nomination of Waymon J. Jackson, which was received by the Senate and appeared in the Congressional Record of February 6, 2003.

AIR FORCE

PN274 Air Force nomination of Richard M. * Norris, which was received by the Senate and appeared in the Congressional Record of January 28, 2003.

PN281 Air Force nomination of Joseph P. Dibeneditto, which was received by the Senate and appeared in the Congressional Record of January 29, 2003.

PN282 Air Force nomination of John C. Landreneau, which was received by the Senate and appeared in the Congressional Record of January 29, 2003.

PN311 Air Force nomination of Charles N. Davidson, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN312 Air Force nomination of Thomas R. Unrath, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

ARMY

PN313 Army nominations (3) beginning THOMAS W. SHEA, and ending THOMAS W. YARBOROUGH, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN314 Army nominations (3) beginning ROBERT J. KINCAID, and ending RODNEY L. THOMAS, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN315 Army nomination of Bradley J. Jorgensen, which was received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN316 Army nominations (8) beginning THERESA S. GONZALES, and ending ANTHONY S. THOMAS, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN317 Army nominations (9) beginning RONALD E. ELLYSON, and ending SHELDON WATSON, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN318 Army nominations (10) beginning DAVID J COHEN, and ending MICHAEL J. ZAPOR, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN319 Army nominations (16) beginning BRAD A * BLANKENSHIP, and ending EUGENE K * WEBSTER, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN320 Army nominations (130) beginning SHEILA R * ADAMS, and ending AMMON * WYNN, III, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN321 Army nominations (37) beginning MARY C * ADAMSCHALLENGER, and ending DAVID A * WRIGHT, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN322 Army nominations (92) beginning TEDD S * ADAIR, II, and ending REBECCA A * YUREK, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

PN323 Army nominations (20) beginning DAVID W GARCIA, and ending TERRY E RAINES, which nominations were received by the Senate and appeared in the Congressional Record of February 11, 2003.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR THURSDAY, FEBRUARY 27, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 noon, Thursday, February 27. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate return to executive session and resume the consideration of the nomination of Miguel Estrada to be a Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Mr. President, for the information of all Senators, tomorrow—which is today—the Senate will begin its 11th day of consideration of the Estrada nomination. I thank my colleagues for their hard work today and encourage those Members who still wish to speak on the nomination to do so during tomorrow's session.

ADJOURNMENT UNTIL THURSDAY, FEBRUARY 27, 2003

Mr. FRIST. Mr. President, if there is no further business to come before the

Senate, I ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 2:08 a.m., adjourned until Thursday, February 27, 2003, at 12 noon.

CONFIRMATIONS

Executive nominations confirmed by the Senate after midnight on February 26, 2003:

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. STEVEN J. HASHEM

AIR FORCE NOMINATION OF RICHARD M. NORRIS.*

AIR FORCE NOMINATION OF JOSEPH P. DIBENEDITTO.

AIR FORCE NOMINATION OF JOHN C. LANDRENEAU.

AIR FORCE NOMINATION OF CHARLES N. DAVIDSON.

AIR FORCE NOMINATION OF THOMAS R. UNRATH.

ARMY NOMINATIONS BEGINNING THOMAS W. SHEA AND ENDING THOMAS W. YARBOROUGH, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING ROBERT J. KINCAID AND ENDING RODNEY L. THOMAS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATION OF BRADLEY J. JORGENSEN.

ARMY NOMINATIONS BEGINNING THERESA S. GONZALES AND ENDING ANTHONY S. THOMAS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING RONALD E. ELLYSON AND ENDING SHELDON WATSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING DAVID J COHEN AND ENDING MICHAEL J ZAPOR, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING BRAD A BLANKENSHIP* AND ENDING EUGENE K WEBSTER,* WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING SHEILA R ADAMS* AND ENDING AMMON WYNN III,* WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING MARY C ADAMSCHALLENGER* AND ENDING DAVID A WRIGHT,* WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING TEDD S ADAIR II* AND ENDING REBECCA A YUREK,* WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING DAVID W GARCIA AND ENDING TERRY E RAINES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

ARMY NOMINATIONS BEGINNING DONOVAN G GREEN AND ENDING DANIEL M WILLIAMS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

MARINE CORPS NOMINATION OF KARL G. HARTENSTINE.

MARINE CORPS NOMINATION OF LELAND W. SUTTEE.

MARINE CORPS NOMINATION OF CARLOS D. SANABRIA.

MARINE CORPS NOMINATION OF JOHN W. BRADWAY, JR.

MARINE CORPS NOMINATION OF KATHLEEN A. HOARD.

MARINE CORPS NOMINATION OF JEFFREY A. FULTZ.

MARINE CORPS NOMINATION OF ERIC R. MCBEE.

MARINE CORPS NOMINATIONS BEGINNING CHRISTOPHER J. AMBS AND ENDING DOUGLAS E. WEDDLE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

MARINE CORPS NOMINATIONS BEGINNING ROBERT E. COTE AND ENDING FRANK L. WHITE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

MARINE CORPS NOMINATIONS BEGINNING CHARLES W. ANDERSON AND ENDING JERRY B. SCHMIDT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

MARINE CORPS NOMINATIONS BEGINNING DOUGLAS M. FINN AND ENDING RONALD P. HEFLIN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

MARINE CORPS NOMINATIONS BEGINNING CALVIN L. HYNES AND ENDING CHARLES S. MORROW, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON FEBRUARY 11, 2003.

NAVY NOMINATION OF WAYMON J. JACKSON.